# (17,938.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1900.

No. 453.

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EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

*vs.*

DAVID W. EBAUGH.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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*a* Supreme Court of South Carolina. Spring Term, 3rd Tuesday in April. Fall Term, 4th Tuesday in November.

Henry McIver, chief justice, Cheraw, S. C.
Y. J. Pope, associate justice, Newberry, S. C.
Eugene B. Gary, associate justice, Abbeville, S. C.
Ira B. Jones, associate justice, Lancaster, S. C.

[Vignette.]

U. R. Brooks, clerk.

COLUMBIA, S. C.

I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify this to be a true, full, and complete copy of the record of the case of David W. Ebaugh, plaintiff, respondent, against Eastern Building & Loan Association of Syracuse, N. Y., defendant, appellant, which is now on file in my office; and I do further certify that the opinion rendered by the court in said case is a part of the record of said case.

I do further certify that the original writ of error granted by Chief Justice Fuller, of the U. S. Supreme Court, on the 1st day of October, 1900, a copy of which is now on file in my office, and the assignment of errors thereon, and the original citation, &c., a copy of the supersedeas bond, the original being now on file in my office, are hereto attached.

Given under my hand and the seal of the supreme court of South Carolina, at Columbia, this 13th day of October, in the year of our Lord one thousand nine hundred, and in the 125th year of the Independence of the United States of America.

Seal Supreme Court of South Carolina.

U. R. BROOKS, *Clerk.*

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1900, Eighth Circuit, Greenville County.

DAVID W. EBAUGH, Plaintiff, Respondent,
*vs.*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

*Case.*

This is an action to recover one thousand dollars, the alleged maturity value of ten (10) shares of stock in defendant association. Jury trial waived, and referred to Oscar Hodges as special referee. Heard by his honor, Judge Ernest Gary, on exceptions to the referee's report, at the November term of court for Greenville county, 1899.

STATE OF SOUTH CAROLINA,
*County of Greenville.*

Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant.

The plaintiff, complaining against the defendant, alleges:

I. That the defendant is a corporation, organized under the
2 laws of the State of New York, with its principal place of business in Syracuse, of said State.

II. That prior to the times hereinafter mentioned, the defendant had been in business for some time, and, as plaintiff is informed and believes, had accumulated a considerable capital stock.

III. That during the month of March or April of the year 1892, this plaintiff was approached by an agent of the defendant and was solicited to take instalment stock in the defendant company. That the plan which was presented to the plaintiff by said agent was that the plaintiff on becoming a member and paying the membership charges, to wit: one dollar per share, would receive a certificate of membership under which he would become liable to pay on each share of his said stock at the rate of seventy-five cents per month for seventy-eight consecutive months, and that then the company would pay to the defendant the full par value of each share, to wit: one hundred dollars; and the said agent represented further that such stipulation would be binding upon the defendant company, and was valid under the laws of the State of New York.

IV. That the plaintiff being ignorant of the laws of the State of New York, relied upon said representation, and agreed to take ten shares of instalment stock in the plaintiff company of the par value of one hundred dollars per share, upon the terms hereinbefore set forth; that thereupon the plaintiff paid the membership fees in the defendant company, to wit: ten dollars, and the company thereon issued to him a certificate for ten shares of stock, which, among other things, bound the plaintiff to pay seventy-five cents per month on each share for seventy-eight months, and the company in said certificate bound itself at the completion of said payments to pay to the plaintiff the par value of said shares on the surrender thereof.

V. That relying upon the representations of the said agent and the stipulations contained in the said certificate, this plaintiff,
3 in addition to the said membership fee of ten dollars, paid to the defendant company the sum of seventy-five cents per month on each share of the said stock for seventy-eight months, beginning with the month of April in the year 1892, and ending with the month of September in the year 1898. That said payments were all made at the times agreed upon, and the *defendant* has performed all agreements on his part with reference to said payments. That during all the said time the defendant well knew that the plaintiff relied upon the said representation made by their agent and the promise con-

tained in the said certificate, and that the said payments were made under the apprehension that the said stipulation was valid and binding in every respect, and would be performed by the defendant company; and that the defendant permitted the plaintiff to continue under said apprehension and to make the said payments until a short time before the last payment, and then the defendant company declined to perform its stipulation as aforesaid.

VI. That on making payment of said instalments for seventy-eight consecutive months, the plaintiff, on September —, 1898, surrendered his certificate in pursuance of the stipulation contained in the said certificate, and demanded compliance with the agreement on the part of the defendant company.

VII. The defendant now declines to perform its said agreement, and alleges that under the laws of the State of New York the said agreement is void, and that it is liable for only what it denominates the withdrawal value of the said shares without interest (which value it claims the right to ascertain and calculate according to regulations of which the plaintiff has no knowledge), and further that said payments are to be made in the order of filing applications for withdrawal, and that the association is not required to pay out on each withdrawal more than one-half of the amount received from dues and stock payments in any month. That the said association
4 has declined to give to the plaintiff any assurance as to when or how much money he may expect under said contract; and although three months have elapsed since the surrender of the said stock, this plaintiff has received no payment thereon or any indication as to when he can expect payment. That the defendant company is further endeavoring by various devices to depress the value of the stock of this plaintiff, in order to secure from him a surrender of his rights against the defendant company for very inadequate consideration; that the defendant persistently denies its liability to the plaintiff under the said contract, and refuses to make any payment to him.

VIII. That if the said stipulation is void under the laws of the State of New York (and to this matter the plaintiff is not advised and, therefore, denies it), this fact was well known to the defendant company and its officers at the time the plaintiff was induced to enter into the said transaction, and that the conduct of the defendant and its agents was fraudulent and was intended to deceive the plaintiff, and the defendant is, therefore, estopped from setting up any such claim, and the defendant is now indebted to the plaintiff in the sum of one thousand dollars, with interest thereon from October 1st, 1898, in pursuance of the terms of its contract as aforesaid.

IX. That if the said stipulation is void under the laws of the State of New York, then the defendant was well aware of said fact at the time of its representations and promises as aforesaid, and the plaintiff is entitled under any circumstances to a return of the money paid by him, with interest from the dates of payment, the same having been procured through the fraud of the defendant and its agents.

Wherefore, the plaintiff demands judgment:

1. Against the defendant for the sum of one thousand dollars, with interest from October 1st, 1898; or, failing in this:

2. He demands judgment for the amounts paid in by him, to wit: five hundred and eighty-five dollars, with interest from the times of the respective payments.

3. For such other relief as may be just.

4. And for the cost of this action.

(Signed) HAYNESWORTH, PARKER & PATTERSON, *Plaintiff's Attorneys.*

January 17th, 1899.

STATE OF SOUTH CAROLINA, }
*County of Greenville.* }

Personally appeared before me David W. Ebaugh, the plaintiff in this case, who, being duly sworn, says that the foregoing complaint is true of his own knowledge.

(Signed) D. W. EBAUGH.

Sworn to before me, this January 17th, 1899.

(Signed) H. J. HAYNESWORTH,
*Notary Public* [L. S.]

*Answer.*

STATE OF SOUTH CAROLINA, }
*County of Greenville.* }

Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*vs.*
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant.

The defendant, answering the plaintiff's complaint herein, alleges,

First.

That the defendant's corporate name is "Eastern Building and Loan Association of Syracuse, N. Y.," instead of "Eastern Building and Loan Association," as stated in the title of this action, and that it is a corporation organized under the laws of the State of New York, with its office and principal place for the transaction of business located in Syracuse, N. Y., and the defendant admits that prior to the times mentioned in the complaint, the defendant had been in business for some time, and alleges that it had transacted considerable business.

Second.

For a further answer, the defendant, on its information and belief, denies that during the month of March or April of the year 1892, this plaintiff was approached by an agent of the defendant

company, and that the plan which was presented to the plaintiff by said agent was to the effect that the plaintiff on becoming a member and paying one dollar per share, would receive a certificate of membership under which he would become liable to pay on each share of his said stock at the rate of seventy-five cents per month for seventy-eight consecutive months, and that *when* the company would pay to the plaintiff the full par value of each share, to wit, $100; and that the said agent represented further that such stipulation would be binding upon the defendant company, and was valid under the laws of the State of New York; and defendant alleges that if any such representations as alleged in paragraph three of the plaintiff's complaint were made by any person to the plaintiff, that said agent or person had no power, right, or authority from this defendant to make any statements or representations to the plaintiff for and in behalf of the defendant.

Third.

For a further answer, the defendant, on its information and belief, denies that the plaintiff was ignorant of the laws of the State of New York; that he relied upon such representations, and thereupon subscribed for ten shares of the instalment stock of the defendant company; defendant admits that the plaintiff paid the membership fees in the defendant company, to wit, $10, and the company issued to him a certificate for ten shares of stock, but denies that in said certificate, or in any other way, it bound itself at the completion
7 of the period of seventy-eight months specified in said certificate to pay to the plaintiff the par value of said ten shares on the surrender thereof.

Fourth.

The defendant admits that the plaintiff, in addition to the said membership fee of $10, paid to the defendant company the sum of seventy-five cents per month on each share of said stock, for seventy-eight months, beginning with April, in the year 1892, and ending with the month of September, in the year 1898, but denies the allegations of said complaint in paragraph five thereof, that the plaintiff paid such sum to the defendant, relying upon the representations of any person or persons whatever; and denies that the plaintiff has performed all agreements on his part with reference to said payments, and denies that it, the said defendant, well knew that the plaintiff relied upon the said representations made by their said alleged agent and the promises contained in the said certificate, and denies that said payments were made under the apprehension that the said stipulation was valid and binding in every respect and would be performed by the defendant company; and the defendant further denies that it permitted the plaintiff to continue under said apprehension and to make the said payments until a short time before the last payment, and that then the defendant company declined to perform its stipulation as aforesaid.

Fifth.

The defendant, further answering said complaint, admits that after the plaintiff had made seventy-eight consecutive payments, he offered to surrender his certificate and demanded the par value and the maturity value of $100 per share for each of the shares mentioned in said certificate, and that the defendant company refused to pay the same.

Sixth.

For a further and separate answer and defense herein, the
8 defendant alleges that it was duly incorpro-ted under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof and supplementary thereto; that thereafter and on or about the 15th day of March, 1892, the plaintiff duly applied in writing to the defendant at its home office in the city of Syracuse, N. Y., for membership in the defendant association, and subscribed for ten shares of its instalment stock, and in consideration of the acceptance of said application by the defendant, agreed to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and all the rules and regulations of said association, and constituted and appointed the secretary of said association for the plaintiff and in the plaintiff's name, place and stead, to appear and vote as plaintiff's proxy upon any and all shares of stock at any time held by him, or standing in his name in said association, during his absence at any and all meetings of stockholders or directors, and upon any and all matters which might properly come before any such meeting, and attorneys one or more under him from time to time in writing to appoint, thereby authorizing, ratifying and confirming all that his said attorney, or his substitute might do or cause to be done as such proxy by virtue thereof; that said proxy did not in any manner affect the plaintiff's right to vote on all such stock whenever he was personally present at any meeting of the stockholders; that said application containing said proxy was duly accepted by the defendant association, and thereupon, and on or about the first of April, 1892, the defendant issued and delivered to the plaintiff at its home office in the city of Syracuse, N. Y., its certificate of shares, certifying, among other things, that the plaintiff was thereby constituted a shareholder of the defendant association, and the holder of ten shares of its instalment stock, of $100 each, in consideration of the membership fee, together with the agreements and statements contained in the application for membership, and full compliance with the terms, conditions
and by-laws printed on said certificate, which were by its
9 express terms referred to and made a part thereof; that the sum of $100 for each of the shares represented by said certificate were payable by defendant to plaintiff, his executors, administrators, or assigns, only after the plaintiff had paid a monthly instalment of seventy-five cents on each share named in said certificate until such share matured, and only in the manner and upon the conditions set forth in the defendant's articles of incorporation and by-laws, and the terms and conditions printed on said certificate, and

that although seventy-eight months have elapsed from the date of said certificate, nevertheless the conditions set forth in defendant's articles of incorporation and by-laws and the terms and conditions printed on said certificate have not been complied with by plaintiff; that the plaintiff has failed to perform all of the obligations, agreements, and conditions on his part required to be performed, and that said contract has not on his part in all respects been fully kept and performed.

Seventh.

For a further and separate answer and defense, the defendant alleges that if the plaintiff has any claim against the defendant it is solely by virtue of the aforesaid certificate of shares and his interest therein as a shareholder of the defendant association; that under and by virtue of said laws under which defendant is incorporated and its articles of incorporation, by-laws, rules, and regulations, the defendant is purely a mutual corporation in which the rights and duties of all of its stockholders are mutual and reciprocal and that no stockholder has any right at any time to receive in settlement or withdrawal of his stock more than the sum paid in by him on said stock plus the accumulated profits thereon, less the *pro rata* share of expenses and losses of defendant corporation properly chargeable against said stock, pursuant to its articles of incorporation and its by-laws, not inconsistent with said articles and said laws of the State of New York; that any provision in the certificate of stock issued by the defendant corporation to the plaintiff for the shares of stock held by him purporting or pretending to guarantee the maturity value thereof at any fixed time or period without regard to the earnings and profits of the defendant corporation and the equal *pro rata* distribution of the profits, losses, and expenses of the defendant corporation among its stockholders, is a contract or attempted contract *ultra vires* of the corporation, wholly beyond its corporate powers, in contravention of its articles of incorporation, by-laws, and the laws of the State of New York by which it is governed and unenforceable against it, but that there is any such guaranty or agreement to pay is denied and, on the contrary, it is alleged that in contemplation of law the promise to pay plaintiff's stock at its calculated maturity in seventy-eight months was a mere estimate and not a guaranty that it would mature in that time from its share of earnings of the defendant association plus the payments required thereon from the plaintiff.

Eighth.

For a further and separate answer and defense, the defendant alleges that on the 17th day of February, 1899, and at the time of the commencement of this action, said shares of stock had not matured and become worth the sum of $100 per share, and that said stock has not yet matured and become worth $100 per share from the amount paid in thereon by the plaintiff, together with the full proportion of earnings of the defendant to which the same is entitled, less the *pro rata* share of expenses and losses of the defendant association properly chargeable against said stock.

Ninth.

For a further and separate answer and defense, the defendant alleges that under and by virtue of its articles of incorporation and by-laws, the plaintiff, whether his said shares be deemed matured
11 or for withdrawal, is required to file his certificate with the defendant association at its home office, properly receipted; that payment thereof be made in order of filing said certificate, and that the value of said shares is to be calculated as of the date of so filing the same as aforesaid, and that no interest is to be paid upon such value; that said certificate of shares has never been presented to the defendant for payment or filed with the defendant at its home office properly receipted for payment, and that said certificate is now, and always has been since the same was issued by the defendant, in the possession of the plaintiff, as defendant is informed and verily believes.

Tenth.

For a further and separate answer and defense, the defendant alleges that even if said shares of stock have been duly filed with the defendant for payment as withdrawn or matured shares, which the defendant denies, that under and by virtue of the provisions of the articles of incorporation and by-laws of the defendant association, it is not required to pay out to withdrawing or matured shares more than one-half the amount received by the defendant corporation from dues and stock payments in any month; that on the 17th day of February, 1899, and at the time of the commencement of this action, the amount of withdrawing and matured, or alleged matured, stock filed prior thereto by other members of the defendant for payment, greatly exceeded the amount of money in the hands of this defendant applicable to such payment, and since then and still does greatly exceed such amount; that on the 17th day of February, 1899, and at the time of the commencement of this action, there were no funds in the hands of this defendant applicable, under its articles of incorporation and by-laws, to the payment of the plaintiff's alleged claim, and that there have not been since, and are not now, any funds so applicable thereto.

12 Eleventh.

For a further and separate answer and defense, the defendant alleges that said certificate of stock was issued to and accepted by the plaintiff upon the following express terms and conditions, which, among others, were printed upon the face thereof, viz: "Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga and State of New York." That this action is brought in the county of Greenville, in the State of South Carolina; and that by reason of the aforesaid agreement, this action is not properly brought or triable in said county of Greenville and State of South Carolina, and that this court has no jurisdiction thereof in said county.

Twelfth.

For a further answer and defense, the defendant denies that it declines to perform the agreement that it entered into with the plaintiff, and alleges that it made no other or different contract than that hereinbefore stated as alleged, and that under the terms and conditions of such contract the plaintiff is not entitled to maintain any action against the defendant for the withdrawal value of his stock, until the association has funds on hand applicable to the payment of the same; and defendant further denies that it is endeavoring by various devices to depress the value of the plaintiff's stock in order to secure from him a surrender of his rights against the defendant company for very inadequate consideration, and denies that the defendant persistently denies its liability to the plaintiff under the said contract and refuses to make any payment to him, but, on the contrary, alleges that the refusal of the defendant to pay the plaintiff is for the reason that the plaintiff's stock has not matured and become worth the sum of $100 per share, and that there are no funds on hand applicable to the payment of the plaintiff's stock if the same has actually matured.

13 Thirteenth.

For a further answer, the defendant denies that it and its officers at any time induced the plaintiff to enter into any contract with the defendant, or its agents, which was fraudulent and intended to deceive the plaintiff, and denies that the defendant is indebted to the plaintiff in the sum of $1,000, with interest thereon from October 1st, 1898, in pursuance of the terms of its contract with the plaintiff, in any sum whatever.

Wherefore, the defendant demands judgment dismissing the plaintiff's complaint and his cause of action herein, with the costs and expenses of this action.

(Signed) T. H. SPAIN,
*Attorney for Defendant.*

STATE OF NEW YORK, } ss:
*County of Onondaga,* }

Nathan C. Visscher, being duly sworn, says that he resides in the city of Syracuse, N. Y.; that he is the assistant secretary and actuary of the defendant above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

NATHAN C. VISSCHER.

Subscribed and sworn to before me, this 18th day of March, 1899.

[L. S.] NELLIE A. POTTER,
*Notary Public, Onondaga, N. Y.*

*Application for Shares in the Eastern Building and Loan Association of Syracuse, N. Y.*

Samuel Carpenter, general agent.

D. W. Ebaugh, of Greenville, county of Greenville, State of South Carolina, hereby apply for membership in the Eastern Building
14 and Loan Association of Syracuse, Onondaga county, New York, and subscribe for ten shares of regular stock.

I hereby agree to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association. And do also hereby, in order to facilitate the transaction of business of the Eastern Building and Loan Association of Syracuse, N. Y., make, constitute and appoint the secretary of said association for me in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock at any time held by me, or standing in my name in said association, during my absence, at any and all meetings of stockholders or directors, and upon any and all matters which may properly come before any such meeting, and attorneys, one or more under him, from time to time in writing to appoint, hereby authorizing, ratifying and confirming all that my said attorney, or his substitute, may do or cause to be done as such proxy by virtue hereof.

This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof, I have hereunto set my hand and affixed my seal, this — day of ——, A. D. 1892.

Witness D. W. EBAUGH. [SEAL.]

The price of stock must accompany this application.

Series No. C, 4. Maturing October 1st, 1898.

Eastern Building and Loan Association of Syracuse, New York.

| Certificate number. | Number of shares. | Amount. |
|---|---|---|
| (12170.) | (10.) | ($1,000.) |

This certifies that D. W. Ebaugh, of Greenville, county of Greenville, and State of South Carolina, is hereby constituted a shareholder of the Eastern Building and Loan Association of Syracuse,
15 New York, incorporated under the laws of the State of New York, and holds ten shares therein, of one hundred dollars each; and in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association, and full compliance with the terms and conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building and Loan Association of Syracuse, New York, agree to pay said shareholder, or his heirs, executors, adminis-

trators or assigns, the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof, or in case of his death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly instalments paid on this certificate, with interest at six per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached. All payments under this certificate are payable at home office of the association at Syracuse, N. Y., within sixty days after the acceptance and approval of satisfactory proofs.

This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay, or cause to be paid, a monthly instalment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay, or cause to be paid, any monthly instalment on or before the last Saturday of each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due and payable for a period of six months or more, such share shall be sold at auction for
16 the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued fines and monthly payments, shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Any member in good standing may withdraw their monthly instalment at any time by first giving thirty days' notice, and will receive six per cent. annual interest on all shares of six months' standing, and up to two years; the third year seven per cent.; and any time after the third year, and before maturity, eight per cent.

Fifth. If a shareholder dies, his personal representative may withdraw his shares at any time, or continue on to maturity.

Sixth. At stated periods, the profits arising from interest, premiums, fines and other sources, shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express, or money order, or registered letter. Individual drafts or checks not receivable.

Eighth. The association reserves the right at any time to make an investigation in all cases prior to the approval of claim.

Ninth. The by-laws of this association, which are attached to and endorsed hereon, are a part of this contract, and such by-laws and

this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferrable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, endorsed thereon by the secretary, after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent. bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatsoever, except as hereinafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga and State of New York.

Fifteenth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of said association, at Syracuse, New York, this 1st day of April, A. D. 1892.

[SEAL.]

J. REYNOLDS,
*Secretary and General Manager.*

H. H. LOUMIS, *President.*

(On back of certificate.)

The within-mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn, and I have this day received the sum of — dollars, in full of the amount due me by reason of such withdrawal.

D. W. EBAUGH. [SEAL.]

Dated at Greenville, S. C., October 15, 1898.

Witness:
FRANK NICHOLS.

18 STATE OF SOUTH CAROLINA,
*County of Greenville.*

Court of Common Pleas.

D. W. EBAUGH
*vs.*
EASTERN LOAN AND BUILDING ASSOCIATION.

AUGUST 29, 1899.

Amendment of summons and complaint allowed, changing name of defendant to Eastern Building and Loan Association of Syracuse, New York.

Haynesworth, Parker and Patterson appear for plaintiff, and T. H. Spain and J. A. Mooney for defendant.

*Testimony.*

No. 12170 certificate of stock in defendant company introduced in evidence and marked "Exhibit A."

D. W. EBAUGH, being duly sworn, says:

I live in Greenville, S. C., and was living there in year 1892. An agent approached me in the year 1892, soliciting my subscription to stock in defendant's company. Name of agent was Ousley.

(This testimony is taken subject to defendant's objection, on the ground that there must be proof *aliunde* of agency; and in second place, if there were proof of agency, the statement of the agent or alleged agent made to plaintiff, which is not in exact conformity to the contract sued on, either enlarging or diminishing the liabilities or rights of defendant company, or in any manner whatever changing the same, the testimony would not be taken.)

Testimony allowed and exception noted for defendant.

I applied for stock in defendant's company through the party. Think the same man delivered the policy to me—as well as I can remember, the same man delivered it to me. The same man got up several members in this organization. Mr. Mitchell was the agent of the local board, but Mr. Mitchell afterwards re-
19 signed, and I made payments direct to the company at Syracuse, N. Y. This man that solicited my stock had several papers or slips that I can't remember, that he had a blank policy, but I do know that he had a great many slips, and he explained it all to me.

Plaintiff offers in evidence "Exhibit D," in case as printed in brief or case of Welling & Bonnoitt *vs.* Eastern B. & L. Association, to be found from page 71 to 84. The offer made under agreement on file. "Exhibit D" marked in evidence.

Literature similar to this in "Exhibit D" was exhibited to me (witness) by the agent. My recollection is that literature exhibited by the agent contained a statement that the stock would mature in

seventy-eight months, and also that the company would pay the stockholder at the end of the seventy-eight months $100.00 per share.

(Defendant's counsel objects to what the agent said to witness on the grounds hereinbefore stated.)

Agent said that the stock would mature in seventy-eight months, and that the company would pay $100.00 per share. Agent said that was not an estimate, but that the company would pay the $100.00 per share. Agent said that the association was incorporated in State of New York, and doing business at Syracuse, in said State. Nothing was said as to whether the agreement was valid under laws of New York. I am not positive about this. My subscription was induced by statement in the literature and the statements made by the agent. I believed the representation made by the agent and the literature.

(Would you have become a member of this association if it had not been for your belief in the representations contained in the literature and the representations made by the agent?)

Defendant objects. Sustained, and plaintiff excepts.

Ans. I would not, for I would not have known anything about it. I signed my name to the receipt on back of certificate. The association has never paid me a cent. I signed this at the end of seventy-eight months, and sent the company policy.

Letter, October 15th, 1898, of plaintiff to defendant, introduced in evidence and marked "Exhibit B."

Application for shares introduced in evidence and marked "Exhibit C."

Cross-examination:

I don't remember that any name was signed to that literature. I think I read all of literature that the agent showed me. I don't remember that the literature said that all the members of the association were equal partners. I don't remember seeing that the literature said that the stock matured when the accumulated profits amounted to one hundred dollars per share. I never read the by-laws until after I got the certificate. I can't say that I have ever read them all the way through. I read in the literature when the stock would mature and how much I had to pay each month and about the withdrawal. I can't say to what extent I was influenced to taking stock in the company by what the man said who represented himself to be agent of the company. He had printed statements, and I would not have taken stock alone on what he said, for I didn't know the man.

(This question is asked subject to defendant's objection.)

My recollection now is that Mr. Mitchell delivered the certificate to me. When I signed the application for stock in the company I gave it to Mr. Ously. The certificate was delivered to me after I

signed the application. I think I signed the application in Mr. Mitchell's office.

Plaintiff closed.

D. W. EBAUGH.

Defendant introduces in evidence the articles of incorporation of defendant association, marked "Exhibit A," in said case. Also "Exhibit B" in said case, which are by-laws of said associa-
21 tion. Also "Exhibit T" in said case, the laws of State of New York, known as chapter 122 of Laws 1851, and acts amendatory thereof.

Plaintiff objects to above on the ground that the defendant is estopped by the representations made by or through its agent and printed literature, and its contract, from showing that it had not the authority to make the contract set forth in certificate.

Also "Exhibit U" in said case, which is case of O'Malley *vs.* People's Building Loan and Savings Association, reported in 92 Hun., New York, 572.

It is by defendant admitted that this is a supreme court decision made in 1895.

Plaintiff objects to this on ground that it is not a decision of court of last resort, and hence is not evidence as to law of New York. And also the decision was rendered subsequent to the execution of this contract, and cannot throw any light on the question at issue.

Defendant also introduces in evidence case of Englehardt *vs.* Fifth Ward Dime and Savings Association, reported in 148 N. Y. Also reported vol. 42, North Eastern Reporter, page 710, and decided in January, 1896.

Objected to by plaintiff on the ground that it is subsequent to the execution of the contract in this case.

Also, People *vs.* Lowe *et al.*, reported in 117 N. Y., page 175.

Also, Concordia Savings and Aid Association *vs.* Reed, reported in 93 N. Y., page 474.

Also, so much of deposition of D. A. Pierce as found in folios 340 to 343 inclusive, and 352 to 355 in said case.

Plaintiff objects to introduction of folios 352 to 355 on the ground that the witness merely states his opinion as deduced from the statutes, the article of incorporation, and the decisions of the court of New York, and said matters cannot be proved by same. And it appears that said decision was rendered subsequent to plaintiff's contract.

Also introduce the affidavit of Wallace Visscher under
22 agreement. Plaintiff objects to this affidavit as certain copies of letters from plaintiff to defendant claiming, on the ground that the said testimony is incompetent to prove the contents of the letters. On the further ground that the letters of October 19 and August 12th contain statements in favor of the defendant written by its own officers, and they are incompetent to prove said matters.

It is admitted that the by-laws are noted on back of the certificate.

It is also admitted that C. A. Pooler, if present, would testify that

no shares of the association were ever issued or application therefor accepted at any other place than at the home office of the defendant association in Syracuse, New York.

Defendant closed.

AUGUST 30TH, 1899.

D. W. EBAUGH recalled. The following testimony is taken subject to plaintiff's objection:

In reply to letter of August 12, 1898, to the company, that I had carried out my part of the contract, and I expected them to carry out theirs. That the contract called for $100.00 per share at the end of the seventy-eight months, and I expected the money to be paid. I have written no letter which admitted that they were not responsible to me for the payment of the $100.00 per share at the end of the seventy-eight months. The letter of August 12th, 1898, was the first time I received information that the company claimed that they were not liable to me for the payment of $100.00 per share at end of the seventy-eight months. I made one payment after, and this completed the seventy-eight payments on the contract.

I wrote to the company before signing the receipt, asking them to send me check for $100.00, and in reply they said that I would have to sign the receipt and forward the certificate to them. The only notice I gave them was that when the thing was paid up I wanted my money.

D. W. EBAUGH.

23 Plaintiff introduces in evidence the case of Whitney Co. *vs.* Barlow, as reported in 63 N. Y. Rep., pages 63 to 73, inclusive.

Also case Dr. Grabb *vs.* American Linen Thread Co., as reported in 21st New York Rep., pages 124 to 131 inclusive.

Also case of Diamond Match Co. *vs.* Pooler, as reported in 106 N. Y. Rep., pages 473 to 487 inclusive.

Counsel agree that the New York reports can be referred to and the decisions shall be considered parts of the case.

The referee was requested by defendant's attorney to give full faith and credit to the laws of New York under article 4, sec. 1, of the U. S. Constitution, and under section 905 of the Revised Statutes of the United States.

*The Definite Contract Plan.*

Eastern Building and Loan Association of Syracuse, N. Y.

Authorized capital, $50,000,000.00.

Incorporated under the laws of the State of New York, under the supervision of the New York State banking department.

Home office: N. W. cor. Salina and Fayette Sts.
Depository: Trust and Deposit Co., of Onondaga.
New York correspondent: Hanover national bank.

Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

Officers and directors:

H. H. Loomis, president, capitalist.

D. H. Murray, vice-president, physician and surgeon.

Jno. J. W. Reynolds, secretary and general manager, building and loan.

Lucius M. Kinne, treasurer, paying teller Trust and Deposit Co. of Onondaga.

24 W. H. Emery, assistant secretary, formerly manager Syracuse Cabinet Co.

M. H. Bunn, assistant general manager, building and loan.

Chas. A. Pooler, superintendent of agencies, building and loan.

Alex. H. Hubbs, manager loan department, formerly real estate.

A. B. Kinne, director, physician and surgeon.

D. A. Pierce, attorney.

Every dollar loaned on first mortgage on inside, improved real estate.

No idle money.

Interest compounded monthly.

Officers and agents bonded. Amount of bonds December 1st, 1891, $703,850.00.

Building associations

are no longer an experiment. The insolvency of a building association is an unknown occurrence. They commend themselves to every community because they furnish the best facilities for borrowing money and, at the same time, retain the benefits of the interest otherwise paid to distant capitalists, while not the least of the benefits which such organizations confer are the habits of saving which they engender and promote. We feel warranted in saying that no system of investment known in this country has proven to be so universally satisfactory to all concerned as the building and

loan system. The system herein presented places the poor man's monthly savings on an equality with the millionaire's surplus, and thereby enables one dollar to earn as much singly as if it were a part of thousands. If affords its shareholders all the advantages of the accumulations of small or large sums of money at more than compound interest, besides being a substantial investment
25 secured by real-estate mortgages. It affords every man the advantage of becoming the owner of his own fireside, and feeling that there is one place on earth he can call "home." Every man struggles to provide a home for his family, and it is his aim to become the owner of it in the shortest possible time.

For the instruction of the reader we here submit a short catechism:

Q. What is the Eastern Building and Loan Association?

A. It is in the nature of a co-operative bank, in which the members are equal partners and the deposits are loaned only to the shareholders.

Q. How are deposits made and regulated?

A. Deposits are small monthly instalments on shares, paid to the association, and are practically compulsory under the by-laws.

Q. How often are the profits divided?

A. Only when stock matures and reaches its par value.

Q. What is the meaning of stock maturing?

A. When the amount deposited, together with accumulated profits, amounts to one hundred dollars on each share.

Q. What amount is deposited monthly?

A. Seventy-five cents per share.

Q. How many shares can each member hold?

A. Two or more shares.

Q. Can women hold shares?

A. Yes.

Q. When will the shares reach their par value?

A. Shares mature in exactly six and a half years.

Q. How much will a member have to pay in altogether?

A. On a basis of ten shares (one thousand dollars maturity value) he will have paid in five hundred and ninety-five dollars ($595) and receives one thousand dollars.

Q. And does a stockholder have to wait until maturity before he can draw his profits?

A. He does, unless he wishes to withdraw entirely, in which
26 event his money is refunded with an equitable amount of dividend added.

Q. When can he withdraw?

A. He can withdraw at any time by giving thirty days' notice of such intention.

Q. Is the stock transferable?

A. It can be transferred at any time.

Q. How is money loaned?

A. On first-mortgage real-estate security, invariably, appraised by members of the local board where the loan is made, who, being investors, are directly interested in the securities.

Q. How is the priority as to borrowing decided?

A. Borrowing members take their turn in receiving money in the same order as the applications are received.

Q. Are there any penalties for delinquencies in making payment?

A. There are. Members in arrears are fined ten cents per share per month, which amount they must pay, together with back dues, to keep their shares in force.

Q. What is the object of this association?

A. The main object is to assist each other in saving money and having what that money earns.

Q. What is the cost of joining this association?

A. The admission fee is one dollar a share, which is paid but once.

Q. Are there any extra assessments?

A. There are none and can be none.

Q. Are there any other charges?

A. There are none except for fines, and no one need be fined if he is punctual in paying his instalments.

*Plan.*

The capital stock of the Eastern Building and Loan Association is divided into shares of $100 each, par value at maturity. Any person, male or female, may become a shareholder, and may
27 apply for two or more shares. All shares on which payments are made are regularly matured at the expiration of seventy-eight months (six and one-half years) from date of certificate.

*Membership Fee.*

Membership fee for each and every share (instalment stock) is one dollar per share, and must be paid to the agent when application is made.

*Monthly Instalments.*

Monthly instalments are seventy-five cents on each one-hundred-dollar share; first instalment due on or before last Saturday of the month in which the certificate is dated, and must be sent to the home office or paid to the local board treasurer, or a legally authorized collecting agent, on or before the last Saturday in each month, without notice.

*Fines.*

If monthly instalments are not paid when due, a fine of ten cents a share is fixed as a penalty for each month the payment is delinquent, but no share can be retired unless it has been in arrears six month-. All fines go to the loan fund, as profits to members.

*Loans.*

The money accumulated in the loan fund is loaned to the first approved application from a member. Loans can be made only to members. All loans must be amply secured by first-mortgage real-

estate security. Loans will only be made upon shares that are three months' old, and in good standing. For illustration—suppose a party owns a town lot worth four hundred dollars or upwards, and after he becomes a shareholder desires to borrow one thousand dollars with which to build a home, and he has ten shares of one hundred dollars each, amounting to one thousand dollars. When the shares are three months old or more, he can make application
28 for a loan on blanks furnished by the association, which he fills out, offering a first mortgage on his lot and the improvements to be made thereon with the money so borrowed. If the association, through its directors, on inspecting his application, finds that the security offered is sufficient, and that all is as represented, and all the requirements have been complied with, his application will be approved, and he will be entitled to the next loan; but, should there be several ahead of him, he will take his regular turn, as all applications for loans are taken up in their regular order.

All interest and premiums are payable monthly at the time of paying monthly instalments.

This association has no auction system, whereby some members are inveigled into paying large premiums, but all members pay alike for money borrowed and take their regular turns in receiving loans.

*Illustration.*

Showing costs and profits to the investor of ten shares or $1,000 in six and one-half years, at time of maturity.

| | |
|---|---|
| He pays a membership fee of $1.00 per share | $10 00 |
| He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78 | 585 00 |
| Total amount invested | 595 00 |
| He receives in cash at maturity | 1,000 00 |
| His net gain is | $405 00 |

*Illustration.*

Showing the cost of $1,000 loan on ten shares of stock for six and one-half years.

| | |
|---|---|
| He bids ten per cent. ($100), which is deducted from the $1,000 borrowed | |
| He pays $15.84 per month for 78 months | $1,235 52 |
| He paid for stock | 10 00 |
| Total | $1,245 52 |

29 It will be seen from the above that $345.52 is the amount paid in excess of the actual amount received on loan. This for the use of the money for six and one-half years. Thus the borrower pays less than six per cent. per annum.

He also pays $10 attorney's fees for examining title.

*How to Remit.*

Remittances can be sent to the secretary at the home office by express order, post-office order, draft, or express, and the secretary will receipt for the same by return mail, or they can be paid to local board treasurer. Any shareholder desiring to pay his monthly instalment semi-annually in advance can do so, and will receive a discount of five per cent. per annum on the money for the time actually advanced, and in this way avoid fines through forgetting and allowing the date of payment to pass.

*Assignment of Shares.*

Any member may sell and assign his shares by filling out the assignment on the back of his certificate (having his signature witnessed) and forwarding to the home office, with two dollars for approval and transfer on the books of the association. The assignee thereof shall be entitled to the same benefits as the original holder of the certificate. Shares cannot be assigned unless square upon the books of the association to date of assignment. No assignment of shares will be valid unless the approval of the secretary is endorsed thereon.

*Withdrawal of Shares.*

See inside of back cover.

*Loans Without Real-estate Security.*

After shares have been in force a year, the holder may obtain a loan on them without other security than the pledging of his shares to the association as collateral, but not to exceed ninety per cent. of their pass-book value. This will enable members who own no real estate to obtain small loans from time to time without paying the exorbitant interest charged by note brokers. No legal fees are charged upon this class of loans.

*Paid-up Stock.*

Paid-up stock is issued and sold at the price of fifty dollars ($50) per share, payable on date of issue. Parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so after certificate has been in force one year, and receive six per cent. annual dividend from the date of issue to date of withdrawal.

This association issues fully paid certificates at $100 per share, on which the holder receives seven per cent. dividend. Dividend paid quarterly.

(For full particulars regarding paid-up stock and fully paid certificates, see form No. 79.)

*Local Boards.*

Whenever sufficient stock has been sold in any town to make it advisable, the members residing in such town may organize a local board or branch of the association.

The officers of the local board shall consist of from five to nine directors, who must be shareholders, from whom shall be elected the president, vice-president, secretary and treasurer (combined), and attorney.

The authorized agents of the association have the authority to appoint the first officers of the local board, provided, however, that such appointees shall only hold office until their successors are elected by the members.

A local-board charter will be issued to said board as soon as the agent shall certify to such election or appointment.

Every thoughtful and intelligent man will appreciate the importance of the following arrangement for handling the funds:

The trustees shall receive from the treasurer each month all mortgages, bonds and securities belonging to the association.

31

The secretary is required to deposit all funds in the hands of the treasurer, and he to deposit the same in the depository of this association.

No money can be withdrawn from the treasury for any purpose except by a check signed by the secretary and countersigned by the treasurer, upon an order stating the purpose for which such money is drawn; such order to be signed by the chairman of the executive committee, as authorized by the board of directors. (Extract from resolutions adopted March 4, 1890.)

This renders extravagance, mismanagement and dishonesty on the part of the managers and agents of this association impossible.

*Special Notice.*

No agent has power to waive or alter any of the conditions or terms expressed in the certificate of shares, or to make any statements other than embraced in the printed literature; and further the association will not be responsible for any bills contracted by any person claiming to be a representative of this association, or for any monies collected (except membership fees on instalment shares), unless explicit authority is given him by the secretary and general manager, which he will have in writing.

Agents or representatives have no authority to promise loans as to time or amount.

For ready reference we submit the following schedule:

32

| No. of shares. | Monthly instalments due on or before the last Saturday of each month. | Maturity value of shares at end of 6½ years. | Total amount of instalments paid in 6½ years. | Shares. | Monthly payments by borrower which pay up loan and interest in 6½ years. |
|---|---|---|---|---|---|
| 2 | $1 50 | $200 | $117 00 | 2 | $3 17 |
| 3 | 2 25 | 300 | 175 50 | 3 | 4 75 |
| 4 | 3 00 | 400 | 234 00 | 4 | 6 34 |
| 5 | 3 75 | 500 | 292 50 | 5 | 7 92 |
| 10 | 7 50 | 1,000 | 585 00 | 10 | 15 84 |
| 20 | 15 00 | 2,000 | 1,170 00 | 20 | 31 68 |
| 30 | 22 50 | 3,000 | 1,755 00 | 30 | 47 52 |
| 40 | 30 00 | 4,000 | 2,340 00 | 40 | 63 36 |
| 50 | 37 50 | 5,000 | 2,925 00 | 50 | 79 50 |
| 100 | 75 00 | 10,000 | 5,850 00 | 100 | 158 40 |

For further information regarding the details of the workings of the association, call on or address

JNO. J. W. REYNOLDS,
*Secretary and General Manager, Syracuse, N. Y.*

This is what appears on inside of back cover:

The all-important feature. Practiced only by the "Eastern." Call withdrawals.

Any shareholder may withdraw his monthly instalments paid to the association, at any time, provided no payments of fines are due and unpaid, by his giving thirty days' notice, and will receive six per cent. dividend on all stock of six months' standing up to two years; the third year, seven per cent.; any time after the third year and before maturity, eight per cent. Withdrawals payable only at the home office.

The withdrawal feature is an all-important question to the would-be investor. The plan as originated and in use by the
33 "Eastern" is the only equitable one, inasmuch as it does not discriminate against the poorer class, or those unfortunates who, because of sickness, loss of position or otherwise, are liable at any time to become unable to keep up their monthly instalments. It is only the wealthy who can place their money beyond their reach for a term of years; consequently, under the forfeiture system in use by other companies, it is this class who receive the benefit at the expense of the less fortunate.

No other restrictions imposed.

This is what appears on back of cover:

The only association making a contract definite in every particular.

Withdrawal value clearly stated, and never less than the amount paid in instalments.

Stock matures in seventy-eight months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system.

No lapses.

No forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purposes.

STATE OF SOUTH CAROLINA,
*County of Greenville.*

In the Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW York, Defendant.

All issues of law and fact arising on the pleadings having been referred to me, I proceeded to hold a reference, and took the testimony which is herewith reported.

The defendant is a corporation chartered in 1890 under the
34 laws of the State of New York. In the spring of 1892, an agent of the defendant approached the plaintiff in Greenville, S. C., where he resides, and solicited him to become a stockholder in the defendant company. The agent exhibited to the plaintiff certain printed circulars or literature, and a specimen of the certificate of stock issued by defendant. The agent also made certain verbal statements to the effect that the company would pay to the plaintiff par value for the stock after seventy-eight monthly payments, and this agreement would be valid. But, as I am in doubt as to the admissibility of these statements, I have not considered them in the discussion of the questions at issue. Practically the same statements, put in a clearer and more tangible form, were contained in the circulars issued by the defendant company and used by its agent in soliciting the plaintiff's subscription. These statements represented the company as promising unconditionally and absolutely that it would pay to the stockholder one hundred dollars for each share of stock at the end of seventy-eight months, alleging that it was "the only association making a contract definite in every particular;" that its "shares mature in exactly six and one-half years;" and that "on a basis of ten shares (one thousand dollars maturity value) he will have paid in five hundred and ninety-five dollars and receives one thousand dollars." The certificate itself contained the following promise: "The said Eastern Building and Loan Association of Syracuse, New York, agree to pay said shareholder, or his heirs, executors, administrators or assigns, the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof."

This promise is clear, unconditional and absolute. The circulars issued by the defendant show that this was its construction of this

promise. I do not think that this promise can be limited or controlled by any indefinite or vague provisions contained in the by-laws.

A similar certificate, together with the charter and by-laws
35 of the defendant company, were before the supreme court in the case of Williamson *vs.* Eastern Building and Loan Association of Syracuse, N. Y., 54 S. C., 582.

The court in that case held that the promise was absolute and unconditional, and bound the defendant to pay one hundred dollars for each share at the end of seventy-eight months. The decision in that case is conclusive of this.

The evidence shows, and I so hold, that the plaintiff paid his entrance fees and all monthly dues.

The Williamson case was an appeal from an order of the circuit judge dissolving the attachment and dismissing the action. This order of the circuit judge proceeded upon two grounds: (1) That the notes and bonds attached were not the subject of attachment. (2) That the changes made in the charter in 1894 and in the by-laws of 1896 provided that not more than one-half of the amount received each month from dues and stock payments should be used in paying withdrawing and maturing stock, and that withdrawals should be paid in the order of the applications therefor. On this ground the circuit judge held that the plaintiff had no present cause of action, and dismissed the proceedings.

In the present case there is absolutely no evidence that there were any changes made either in the charter or by-laws. So that the questions at issue are to be decided as though no such changes had been made.

The supreme court reversed the order of the circuit judge, and held that under the contract of the defendant it was bound to pay to the plaintiff the par value of its stock after seventy-eight months. The question as to whether this promise was in excess of the charter powers was not expressly decided by the supreme court, but that court did decide that even though it were in excess of its charter powers (in the language of B. B. R. R. Co. *vs.* McDonald, 60 Am. St. Rep., 172): "The general rule is that where a private corporation has entered into a contract not immoral in itself, and not for-
36 bidden by any statute, and it has been in good faith performed by the other party, the corporation will not be heard on a plea of *ultra vires*."

This proposition is fully sustained by the decisions of New York. The plaintiff introduced in evidence the following decisions of that court:

Whitney Arms Co. *vs.* Barlow, 63 N. Y., 62.

De Grand *vs.* American Linen Thread Co., 21 N. Y., 124.

Diamond Match Co. *vs.* Roeber, 106 N. Y., 473.

This constituted the only evidence before me as to what was the law of New York touching this point. I find as a matter of fact that the law of New York is that where a corporation enters into a contract that is in excess of its charter powers or is unauthorized by law, it will nevertheless be bound to perform its agreement as con-

tained in the contract, if it suffers the other party to perform his agreement, and receives the benefits and retains them.

This being the law of New York, it is conclusive of the case at issue.

I find as a matter of fact that the defendant promised to pay to the plaintiff one hundred dollars for each share of the stock taken by him at the end of seventy-eight months; and that it represented to him that in issuing this stock it would be bound to perform this agreement according to its terms.

I further find that the plaintiff was induced by this promise and this representation to take the stock; and that believing the promise to be valid and that the defendant intended to perform it, he paid the entrance fee and the monthly dues.

I further find that the defendant, knowing that the plaintiff relied upon the validity of this promise, allowed him to pay his money; and that defendant has continued to hold on to this money and has never offered to return it.

I, therefore, hold that, even if the contract made by the defendant was in excess of its charter powers, it would not be heard to plead *ultra vires*, but would be bound under the law of New York to perform its promise as expressed in the certificate. The de-
37 fendant introduced in evidence chapters 122 and 564 of the Statutes of New York, under which defendant's charter was issued. And he urged upon me to hold that these acts forbid the defendant to make a contract such as that contained in the certificate. There is no provision in these statutes which forbid- such a contract; the most that can be said is that the statutes do not confer the powers or authorize a corporation chartered under them to make such an agreement; in other words, that such an agreement is in excess of its charter powers. But I am by no means convinced that these acts do not confer upon building and loan associations the power to make an agreement of the kind set forth in the certificate of stock. The objection urged against this agreement is that it provides for the maturity of the stock at a definite time. Chapter 122, par. 2, authorizes building and loan associations to provide "the manner of redemption of shares by advances made thereon." "And the ultimate amount to be paid to the owners of unredeemed shares." This chapter as well as chapter 564 evidently contemplate that a building and loan association may issue paid-up stock, and they do not impose any limitation upon the price at which such stock is to be issued, or as to the terms of its redemption. It is clear that under these statutes the association could issue ten shares of paid-up stock for five hundred and eighty-five dollars in cash, to be redeemed at the end of seventy-eight months. For the same reason I do not see why such an association may not issue stock to be fully paid up by seventy-eight monthly payments, and to be redeemed at par at the end of that time. The latter promise may be unwise; but this is not the question at issue. It is whether such a contract is forbidden by the statutes. I am clearly of the opinion that it is not forbidden by the statutes, and I so hold. The most that can be said is that such a promise is not authorized by the statute.

I, therefore, conclude that the promise made by the defendant to pay the plaintiff one hundred dollars for each share of stock
38 at the end of seventy-eight months, is not immoral in itself, and is not forbidden by statute either in New York or in this State.

The defendant introduced in evidence the decision in the case of O'Malley *vs.* People's Building, Loan and Savings Asso., 92 Hun., 572, for the purpose of showing that an agreement like that contained in Ebaugh's certificate is not enforceable under the laws of New York. The plaintiff objected to the introduction of this decision as evidence, on the ground that it was irrelevant to the issues in this case, to wit: (1) That the decision was rendered in 1895, whereas the contract sued on was made in 1892; and (2) in that the decision was made by the supreme court of the State of New York, which is not a court of last resort. While I have admitted the decision, I do not think it has any force in determining the issues between the plaintiff and the defendant. The decisions of the supreme court of New York do not settle the law of that State. They tend to this result no more than do circuit court decisions in South Carolina. I repeat, that in my opinion this contract is neither immoral nor is it forbidden by the laws of New York or of this State.

It is possible that this contract might not be enforceable by a stockholder as against creditors. But there is no such question in this case. There is no allegation that the defendant owes any debts; on the contrary, it was stated in argument that the defendant association was abundantly solvent.

The question is merely between the association itself and one of its stockholders, between him who promises and him to whom the promise is made.

It is urged that to allow plaintiff to recover judgment on his contract will work a preference to him over other stockholders.

This argument might meet with some consideration if insolvency proceedings had been commenced, and a receiver appointed. But no such proceedings have been started; and there is no evidence that to allow the plaintiff judgment will work a preference
39 in his favor. But even if it did work a preference, this would be no defence to an action at law brought upon the defendant's agreement.

Again, it is said that if the courts hold the defendant to be bound by its promise as contained in its certificate, this would operate to bankrupt the defendant. But this argument cannot prevail. It is the business of courts to enforce contracts as made, and its hands will not be stayed by reason of the debtor's plea that the enforcement of his obligations will reduce him to bankruptcy. It may be that the defendant's agreement with its stockholders was unwise, but if so this court has nothing to do with that question.

This is an action at law, brought upon a contract made by the defendant. This contract is to be enforced according to its terms.

To summarize my conclusions, I hold as follows:

(1.) That the defendant bound itself in express terms to pay to the plaintiff one hundred dollars for each share of stock subscribed by

him at the end of seventy-eight months, provided he paid his monthly instalments during that time; and that the plaintiff did pay all his monthly dues.

(2.) That this promise was not immoral in itself, and was not forbidden by the statutes of law of New York as established at the time of the contract.

(3.) That even if this contract was in excess of its chartered powers, and was unauthorized by the laws of New York, yet under the principle of law as established in that State and in this State the defendant would be bound to discharge its promise, where it had received, and where it retains, the benefit of the transaction. I find that it did receive, and does retain, the benefit of the transaction and that it suffered the plaintiff to perform his part of the agreement under the belief that its promise was valid, and that it would discharge such promise according to its terms.

I, therefore, hold that the plaintiff is entitled to judgment against the defendant for the sum of one thousand dollars, with interest from October 15, 1898, at the rate of seven per cent. per annum and for the costs of this action.

All of which is respectfully reported.

(Signed) OSCAR HODGES,
*Special Referee.*

Greenville, S. C., September 19, 1899.

*Exceptions.*

STATE OF SOUTH CAROLINA,
*County of Greenville.*

In Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant.

To Messrs. Haynsworth, Parker and Patterson, plaintiff's attorneys:

Please take notice that the defendant in the above-entitled case appeals to the circuit court from the report of the special referee, made in same case, bearing date September 19th, 1899, on the following grounds:

I. That the referee erred in allowing the plaintiff to testify to representations and statements purporting to have been made to him by an alleged agent, when there was no proof of agency, other than mere declamations as to that fact made by the alleged agent.

II. That the referee erred in holding that the circular or literature, purporting to have been issued by the defendant, represented that the defendant promised, unconditionally, to pay the plaintiff one hundred dollars for each share of stock at the expiration of seventy-eight months. It being submitted that what was said relative to the maturity of stock in that time was merely an expression of

opinion as to the time it would take the earnings of the de-
41 fendant to bring the stock up to the par value of one hundred dollars and on which no legal reliance could be placed.

III. That the referee erred in not holding specifically that the contract was to be governed and construed by the laws of the State of New York.

IV. That the referee erred in not holding that the contract in question was to be sought for in the laws of New York, the defendant's articles of incorporation, by-laws, the certificate, its terms and conditions, and the application for membership.

V. That the referee erred in his construction of the contract, by holding that it was an absolute and unconditional promise to pay one hundred dollars per share at the expiration of seventy-eight months, when the clause in the certificate relative to the seventy-eight months ought to have been construed as an estimated period of maturity.

VI. That the referee erred in holding that the provisions in the certificate, relative to the payment of one hundred dollars per share at the expiration of seventy-eight months, was not to be controlled by the laws of New York, nor any provision in the defendant's articles of incorporation, or by-laws.

VII. That the referee erred in finding as a fact, that a corporation chartered under chapters 122 and 564 of the laws of New York, which issued a certificate containing a fixed period of maturity, would not be heard on a plea of *ultra vires*, and would be bound thereby.

VIII. That the referee erred in holding that under the laws of New York the defendant had the power to issue a certificate containing a fixed period of maturity, and would be bound by it, as an absolute promise to pay one hundred dollars per share at the end of seventy-eight months.

IX. That the referee erred in holding that the decision of O'Malley *vs.* People's Building, Loan and Savings Association, 92 Hun., N. Y.,
572, rendered by the appellate division of the supreme court
42 of New York, had no application to this case on two grounds: (1) That the decision was rendered after the contract was made; and (2) that the decision of said court does not settle questions of law in that State. It is respectfully submitted that said decision does apply to this case, notwithstanding the fact of its rendition after the creation of the contract, and that there was no proof going to show that said court does not settle questions of law in that State, but the proof is that it does.

X. That the referee erred in finding as a fact, that the defendant represented to plaintiff that it would pay him at the expiration of seventy-eight months one hundred dollars per share, and thereby induced plaintiff to purchase stock.

XI. That the referee erred in finding as a fact that the defendant knew that the plaintiff was expecting to be paid one hundred dollars per share at the expiration of seventy-eight months, regardless of the earnings of the defendant.

XII. That the referee erred in not giving full faith and credit to

the laws of New York under article 4, section 1, of the Constitution of the United States, and under section 905 of the Revised Statutes of the United States.

XIII. That the referee erred in not finding as facts, that the court of appeals of New York had decided the following cases (which were introduced into evidence by the defendant), to wit: Englehardt *vs.* Fifth Ward Dime Savings and Loan Association, 148 N. Y., page 281; People *vs.* Lowe *et al.*, 117 N. Y., page 175; and Concordia Savings and Aid Association *vs.* Read *et al.*, 93 N. Y., page 474.

XIV. That the referee erred in not finding as a fact the earnings of the defendant had not matured the plaintiff's stock.

XV. That the referee erred in not finding as a fact that at the commencement of this action there was not money in the treasury with which to pay plaintiff's withdrawal claim.

XVI. That the referee erred in not dismissing the complaint on the ground that the action was prematurely brought.

43 XVII. That the referee erred in finding and holding that the plaintiff was induced to enter into the contract by reason of the fixed period of seventy-eight months, when the law charged plaintiff with notice as to the extent of the defendant's chartered powers, and that plaintiff knew that the defendant could not issue a certificate containing a fixed period of maturity, and that plaintiff knew that the defendant was a mutual association, each member being entitled only to his *pro rata* share of the profits.

(Signed) T. H. SPAIN,
*Defendant's Attorney.*

October 4, 1899.

UNITED STATES OF AMERICA, }
*State of New York.* }

By John Palmer, secretary of state and custodian of the great seal thereof.

It is hereby certified, that John Palmer was, on the day of the date of the annexed certificate and attestation, secretary of state of the State of New York, and duly authorized to make the same; that such secretary of state is the proper officer to make such certificate and attestation, and that the same are in due form; that the seal affixed to said certificate is the seal of office of the secretary of state of the State of New York; that the signature thereto of the said secretary of state is in his own proper handwriting, and is genuine; and, further, that the secretary of state is the custodian of the original law, so certified and attested, and custodian of the great seal of said State, hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

[L. S.] In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand and seal at the city of Albany, the 25th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

JNO. PALMER,
*Secretary of State.*

44 CHAP. 122.

An act for the incorporation of building, mutual loan, and accumulating-fund associations, passed April 10, 1851.

The People of the State of New York, represented in senate and assembly, do enact as follows:

1. Any number of persons, not less than nine, may associate and form an incorporated company for the purpose of accumulating a fund for the purchase of real estate, the erection of buildings, or the making of other improvements on lands, or to pay off incumbrances thereon; or to aid its members in acquiring real estate, making improvements thereon and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members, who do not obtain advances as above mentioned, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association.

2. Such persons shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the time of its regular meetings, and how special meetings may be called, and what shall constitute a quorum to transact business at meetings; the qualification of members and how constituted; what officers, trustees and attorney there shall be, and how and when chosen, and their duties, and how removed or suspended from office; the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, and fees to be paid on the transfer of shares; the fines and penalties for non-payment of dues or fees, or other violation of the articles of association; the manner of redemption of shares by advances made thereon, the mortgaged security to be taken on such advances, and how the same may be redeemed or changed; the manner of transfer or withdrawal of shares; the manner of investing funds not required for advances on shares; the qualifications of voters at the meetings, and the mode of voting; the ultimate amount to be paid to
45 the owners of unredeemed shares; the manner of altering or amending the articles of association and such other provisions as shall be necessary for the convenient and effective transaction of the business thereof; provided that the same shall not in any respect contravene the constitution or laws of this State.

3. A true copy of such articles signed by the officers of the association, together with a statement showing when the association was organized, and the place of the transaction of its business, and the name of the officers and trustees at the time of the making such statement, which shall be verified by oath or affirmation before any officer authorized to take affidavits to be used in courts of justice shall be filed in the office of the clerk of the county in which such association shall transact its business; and thereupon the persons who have subscribed the articles of association as aforesaid, and such other persons as shall become members of such association, and their successors, shall be a body corporate, by the name specified in such articles of association, and shall possess the powers and privileges,

and be subject to the provisions of title third of chapter eighteen of the first part of the Revised Statutes, so far as those provisions are consistent with the provisions of this act, and they shall by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on their operations named in such certificate.

4. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments, as the articles of association shall prescribe, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company
46 shall be carried on as aforesaid.

5. All corporations formed under this act shall have power to borrow money for temporary purposes not inconsistent with the objects of their organization; but no loan for such purposes shall have a longer duration than two years, nor shall such indebtedness exceed at any one time one-fourth of the aggregate amount of the shares and parts of shares and the income thereof, actually paid in and received.

6. Parents and guardians may take and hold shares in such association in behalf and for the use of their minor children or wards, provided the cost of such shares be defrayed from the personal earnings of such minor children or wards, or by gifts from persons other than their male parents; married women may take and hold shares in such associations, provided the cost of such shares be defrayed from their personal earnings, the personal earnings of their children voluntarily bestowed for this purpose, or from property bequeathed or given to them by persons other than their husbands.

7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association, upon the ground that by reason of losses, or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon; nor shall the imposition of fines for non-payment of dues or
47 fees, or other violation of the articles of association, or of any premium for loans made to members, be deemed to be a violation of the provisions of any statute against usury.

8. Any existing association, formed for the purposes mentioned

in the first section of this act may on the vote of a majority of the voting shares, at any regular meeting, after the passage of this act become entitled to the benefit of this act, on complying with the second and third sections thereof, unless the second section has heretofore been complied with; in which case it shall be necessary to comply only with the said third section.

9. No officer, trustee, attorney, agent or servant of any association hereby incorporated, shall use or dispose of any part of the funds of such association, or assign, transfer, cancel, deliver up or acknowledge satisfaction of any bond, mortgage or other written instrument belonging to such association, unless duly authorized, or be guilty of any fraud in the performance of his duties; and every person guilty of a violation of this section shall be liable civilly to the party injured, to the extent of the damage thereby incurred, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

10. Each association formed under the provisions of this act shall, at the close of its first year's operations, and annually at the same period in each year thereafter, publish in at least two newspapers published in the place where their business may be located, or if no newspaper shall be published in such place, then in any two newspapers published nearest such place, a concise statement, verified on the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities, specifying the same particularly.

11. All shareholders of any association formed under this act shall be individually liable to the creditors of said association to
48 an amount equal to the amount of stock held by them respectively, for all debts contracted by such association. The directors or other officers of every association formed under this act, shall be personally liable for any fraudulent use, disposition or investment of any monies or property belonging to such association, or for any loss which shall be incurred by any investments made by such directors or other officers, other than such as are mentioned in and authorized by this act; but no director or other officer of any such association shall be liable as aforesaid, except he authorized, sanctioned, approved or made such fraudulent use, disposition or investment as aforesaid.

12. No person holding stock in any such company, or executor, administrator, guardian or trustee; and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act, and hold the same stock in his own name.

13. Every such executor, administrator, guardian or trustee shall

represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

14. In case it shall happen at any time that an election of officers shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the said by-laws; and all acts of trustees shall be valid
49 and binding as against such company, until their successors shall be elected.

15. The legislature may at any time alter, amend or repeal this act, or may annul or repeal any incorporation formed or created under this act, but such amendment or repeal shall not, nor shall the dissolution of any such company take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

16. Any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.

17. Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, it shall be the duty of the trustee to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock.

18. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear
50 in person or by proxy, in numbers representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if on canvassing the votes it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceeding, showing a compliance with the provisions

of this act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate.

19. The shares held by the members of all associations incorporated under the provisions of this act, shall be exempt from sale on execution for debt, to an extent not exceeding six hundred dollars in such shares, at their par value.

20. No loan made by any such association to any of its members may exceed in amount the par value of the capital stock for which such member may have subscribed.

21. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy to be a true copy, and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

22. This act shall take effect immediately.

## CHAP. 564.

An act to amend chapter one hundred and twenty-two of the laws of eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual loan, and accumulating-fund associations," passed June 9, 1875.

The People of the State of New York, represented in senate
51 and assembly, do enact as follows:

SECTION 1. The seventh section of chapter one hundred and twenty-two of the laws of eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual loan and accumulating-fund associations," is hereby amended so as to read as follows:

7. The trustees of any association formed under the provisions of this act may, from time to time, declare dividends from the earnings of the association, payable in such manner as may be provided in the articles of association; but no dividend shall be declared, except from the earnings of the association; and if the trustees of any such association shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable to the extent of the dividend so declared and paid, for all the debts of the association then existing or that shall be thereafter contracted while they shall respectively continue in office; provided, that if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of his objection in writing with the clerk of the company, and with the clerk of the county, he shall be exempt from the said liability. But no trustee who shall be present at any meeting when such dividend is declared, shall be

exempt from such liability, unless he shall then and there object to the declaration or payment of such dividend, and shall also procure his objection to be noted in the book of minutes of such association. No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that, by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest
52 thereon; nor shall the imposition of fines for the non-payment of dues or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association or of any premium for loans made to members, be deemed a violation of the provisions of any statute against usury.

2. Every corporation organized under the provisions of said act, and every corporation heretofore organized under the laws of this State for purposes similar to those provided for in said act, shall annually make a full report in writing of the affairs and conditions of such corporation, on the first day of January in each year, to the superintendent of the banking department, in such form any by such officers of the said corporation as the said superintendent may designate, which report shall be in place of any report which any such corporation may now be required to make to the supreme court, the comptroller, or otherwise. Such report shall be verified by the oath or affirmation of the officers making such report; and any wilful false swearing in regard to such report shall be deemed perjury, and be subject to the prosecutions and punishments prescribed by law for that offense. Every such report shall be made within twenty days after the day to which it relates, and shall be in such form, and contain such statements, returns and information as to the affairs, business, condition, obligations and resources of such corporation as the said superintendent may, from time to time, prescribe and require. And the said superintendent may, if he be of opinion that it is desirable, require that a like report, either wholly or in part, as to the particulars aforesaid, be made to him at any time by any such corporation aforesaid, within such period as he may designate.

3. It shall be the duty of the said superintendent, once in two years, either personally or by some competent person or persons, to be appointed by him, to visit and examine every corporation required by this act to report as aforesaid. The said superintendent and every such examiner shall have power to administer an
53 oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination, by summons, subpœna or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record of this State; and all books and papers which it may be deemed necessary to examine by the superintendent, or the examiner or examiners so appointed, shall be produced, and their pro-

duction may be compelled in the like manner. The expense of every such examination shall be paid by the corporation examined to such amount the superintendent shall determine. Whenever such examination shall be made by the superintendent personally, or by one or more of the regular clerks in his department, no charge shall be made on such examination but for necessary traveling and other actual expenses.

4. On every such examination inquiry shall be made as to the condition and resources of the corporation generally, the mode of conducting and managing its affairs, the action of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs.

5. If it shall appear to the said superintendent from the report of any such corporation, or from any examination made by him, or from the report of any examination made to him, that any corporation has committed a violation of its charter or of law, or is conducting business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal of office, addressed to such corporation, direct the discontinuance of such illegal or unsafe practices, and conformity with the requirements of its charter and of law, and with safety and security in its transactions; and whenever any corporation shall refuse or neglect to make such report as is hereinbefore required, or to comply with any such order as aforesaid; or whenever it shall appear to the superintendent that it is unsafe or inexpedient for any corporation to continue to transact business, he shall communicate the facts to the attorney general, who shall thereupon be authorized to institute such proceedings against any such corporations as are now or may hereafter be provided for by law, in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

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6. If any such corporation shall fail to furnish to the superintendent of the banking department any report or statement required by this act at the time so required, it shall forfeit the sum of ten dollars per day for every day such report or statement shall be so delayed or withheld, and the said superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the State, and be applied to the expenses of the bank department.

7. This act shall take effect immediately.

104–6–17–'97–200.

STATE OF NEW YORK, } ss:
*Office of the Secretary of State,* }

I have compared the preceding with the original laws on file in this office, and do hereby certify that the same are correct transcripts therefrom, and the whole of said original laws.

Given under my hand and the seal of office of the secretary

of state, at the city of Albany, this 25th day of January, in the year one thousand eight hundred and ninety-eight.

JNO. PALMER,
*Secretary of State.*

O'MALLEY
*vs.*
PEOPLE'S BUILDING, LOAN AND SAVINGS ASSOCIATION.

Reported in 92 Hun. (N. Y.), 572.

LEWIS, *J.*:

"This action was brought to recover the sum of $500, claimed to be due upon a certificate of five shares of stock issued by the
55 defendant to the plaintiff, of the par value of $100 a share. The principal question presented is whether the plaintiff is entitled to recover the par value of the shares, or whether his recovery shall be limited to the sum of $371, that being the amount, as claimed by the defendant, which the shares had earned at the time this action was commenced.

"The defendant is a building, loan and savings association. It was organized in the month of December, 1887, under chapter 122 of the Laws of 1851, entitled 'An act for the incorporation of building, mutual loan and accumulating-fund associations,' and the acts amendatory thereof and supplemental thereto. Its principal office is in the village of Geneva, Ontario county, N. Y. Its capital stock is $5,000,000, represented by 50,000 shares of the par value of $100 a share. It is provided by section 1 of the act of 1851 that any number of persons, not less than nine, may associate in forming an incorporated company for the purpose of accumulating a fund for aiding its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members who do not obtain advances upon their shares of stock when the funds of the association shall amount to a certain sum per share, to be specified in the articles of association. The act provides for the filing of articles of association, which are to be subscribed by the members, in which shall be stated, among other things, the amount of the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, the fines and penalties for non-payment of dues, fees, or other violations of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances, how same may be redeemed or changed, and the ultimate amount to be paid to the owners of unredeemed shares. It was further provided by said act that corporations formed under it shall have the power to borrow
56 money for temporary purposes, not inconsistent with the objects of their organization, but no loan for such purposes shall have a longer duration than two years.

"Articles of association were duly subscribed and filed by the defendant. It is provided therein that persons, on becoming members

of the association, shall duly subscribe a written application for shares desired to be purchased, and pay an admission fee of $1 on each share, and thereafter pay one dollar a month on each share, and in addition thereto the sum of 25 cents every three months. The scheme and plan of the association is, briefly, to issue its shares of stock to persons desiring to purchase the same; and with the moneys paid by the shareholders, and the fines and penalties which may be imposed upon the members, to accumulate a fund, which, after paying the expenses of the association, is to be loaned or advanced to the holders of the shares of stock who may make application therefor, to the amount of the par value of the stock. The moneys advanced are to be secured by the bond of the applicant, and by a mortgage upon unincumbered real estate, conditioned to pay on the amount borrowed annual interest of five per cent., and in addition thereto a premium of five per cent. per annum, the interest and premium to be paid in weekly instalments, until the mortgage matures. The certificates of stock upon which advances are not made may be held by the owner as an investment simply. The holder thereof is entitled to the dividends which may be made thereon from time to time. It is provided by the defendant's by-laws that any member, in lieu of paying the monthly and quarterly instalments, may, at the time of making application, pay $60 a share, and receive a paid-up certificate with a maturity face value of $100. The holders of these paid-up certificates are not liable for any admission fee, fines, or to the cancellation of their stock; and they may, upon the surrender thereof, withdraw the amount they have paid on the same at any time after three years from the date of issue thereof, and before maturity, together with annual
57 interest of six per cent. The by-laws also provide that the directors may, in lieu of the admission and other fees, deduct from paid-up certificates six per cent. per annum on the maturity face value of the stock for the estimated period of five years, and place the same in the expense fund, to defray the expenses of the association.

"The purpose of the law, it will be seen, is to provide an opportunity for the people of limited means to invest a portion of their income, making payments in small sums from time to time, and thereby secure to themselves homes, which they might not be able to do if they were required to make their payments in large amounts. If the affairs of such associations are conducted in conformity to the law and their articles of association and by-laws, the investments of the shareholders are reasonably safe; but if, on the contrary, they are improvidently and carelessly managed, they are quite sure to fail in their purpose.

"There was issued to the plaintiff, upon his written application therefor, on the 2d day of December, 1889, a certificate for five shares of the defendant's stock. It was provided in the certificate that the plaintiff was constituted the holder of five shares of stock of the defendant, of $100 each,' in consideration of the entrance fee, together with agreements and full compliance with the terms and conditions printed upon the back of this certificate, and the articles of association

and by-laws adopted by the said association, all of which are hereby referred to and made a part of this contract.' The certificate further stated that the defendant agreed to pay said shareholder, or his heirs, executors, administrators or assigns, the sum of $100 for each of said shares at the end of five years from the date thereof, or, in case of his death before the expiration of said term, then the sum of money equal to the amount of monthly instalments paid on the shares, together with all dividends which have accrued thereon, 'all of which are payable in the manner and upon the conditions set forth in the articles of association and by-laws, and terms and conditions
58 printed on the back of this certificate.' The plaintiff in all respects complied with the rules and regulations of the defendant, and upon the expiration of the five years from the date of the certificate he presented it to the defendant, and demanded payment for its par value. The defendant declined to pay the $500, for the alleged reason that the shares had not then earned that amount, but stated that the amount they had earned was $371, which the defendant offered to pay to the plaintiff upon the surrender by him of the certificate. The plaintiff declined to accept the amount so offered, and thereupon brought this action. The trial court construed the certificate to be an absolute, unconditional promise to pay the $500 upon the expiration of five years from its date, and directed a judgment accordingly.

"The main question presented by the appeal, as stated, is whether the plaintiff is entitled to recover the face value of the certificate, or shall his recovery be limited to the amount the shares have earned? If the language of the certificate alone is to be considered, there can be but little doubt that the decision of the trial court was right. In construing this contract, the defendant's articles of association and by-laws must be considered as part of the contract, and given their proper effect. Gibbs *vs.* Bank, 83 Hun., 92; 31 N. Y. Supp., 406; *In re* Commissioners of Washington Park, 52 N. Y., 131. It is reasonably certain that if the construction contended for by the plaintiff is to prevail, it will thwart the scheme and purpose of the association, and probably bankrupt it. The plan of the organization contemplates that the holders of certificates shall be entitled to share equally in its earnings. It is a mutual association. It cannot with any propriety be claimed that, under the defendant's articles and by-laws, it was contemplated that there should be any distinction in the time for the maturity of the shares of stock. The officers of the defendant, however, assumed to issue to the plaintiff a certificate which, upon its face, states that the company, at the end of five years, will pay to the holder
59 thereof the sum of $100 a share. Plaintiff's payments were $13 a year on each share of his stock, amounting, upon his five shares, to $65 a year, and in five years to the sum of $325. Interest computed at six per cent. per annum on the payments from the time they were respectively made until the end of the five years, amounts to between $45 and $46, which, added to the payments, makes $371, the amount which the defendant claimed the shares had earned, and which it offered to pay. If the plaintiff is entitled to

recover the $500, his investment earned him from 22 to 23 per cent. per annum; an amount of interest which, if paid upon all certificates issued by the defendant, would in probability bankrupt the association, a result which, it would seem, must have been apparent to the parties when the transaction took place.

"The plaintiff was presumably aware of the general plan of the association, for it was stated in his certificate that the articles of association and the by-laws were to form a part of the contract, and, as stated, the general plan of the association contemplated that all the shareholders should be entitled to a *pro rata* share of its earnings. He must have been aware that it was not at all probable that the earnings of the association would be sufficient to pay the rate of interest which his construction of the contract calls for. It was not possible to know, at the time the certificate was issued to the plaintiff, when it would mature by the accumulation of dividends, for that necessarily depended upon the earnings of the association, and that could not be determined in advance. The dues, fees and penalties paid by the shareholders, with the interest and premiums paid by the borrowing members, make up and constitute the income of the association, and provide the fund from which the dividends upon the stock are paid. People *vs.* Preston, 140 N. Y., 549; 35 N. E., 979. The dividends can only be paid out of the earnings. Section 7, c. 122, Laws 1851, as amended by chapter 564, Laws 1875. If the five-year clause be construed as an estimated time for the
60 maturity of the certificate, then the certificate conforms to the general scheme of the organization and to the statutes. The authority to issue a certificate with a fixed period of maturity is not expressly given, either by the statute or by the articles of association or by-laws of the society. We are of the opinion that the defendant did not possess the power or authority to issue a certificate containing a fixed maturity period, and that the clause in the certificate in question should be construed as an estimated period of maturity. The amount actually earned by the certificate at the time it was presented by the plaintiff for payment was only $371.

"The judgment should be reversed, and a new trial granted, costs to abide the event, unless the plaintiff, within twenty days, stipulates to reduce the recovery of damages to $371, and interest thereon from December 2, 1894; and, in that event, the judgment be so modified, and, as modified, affirmed, without costs of this appeal to either party.

"A like disposition should be made of the case of Church *vs.* Same Defendant, *infra*.

"All concur."

D. A. Pierce, being duly sworn, deposes and saith as follows:

I reside in the city of Syracuse, N. Y., and am an attorney-at-law. I was admitted to practice in New York in 1884, and have been practicing law in said State ever since. I am the general attorney and one of the directors of the defendant association, and have been its general attorney since April, 1890. I am familiar with the laws of the State of New York in relation to building and loan associa-

tions, and with the law generally applicable to such associations. I have made such laws a special study on account of my connection as general attorney with defendant association, my duties as such having taken practically all of my time during a number of years past.

The defendant is a corporation, and was incorporated in March, 1890, under chapter 122 of the Laws of 1851 of the State of
61 New York, as amended by chapter 564 of the Laws of 1875 of said State. I have an exemplified copy of said laws, and hereby produce the same.

Introduced and marked "Ex. I."

There has been no change in said law of 1851, as amended by said law of 1875, so far as the fundamental acts and operations of associations incorporated thereunder are concerned.

I am familiar with the defendant's articles of incorporation and by-laws, and all provisions thereof.

Under the statute under which the defendant corporation is incorporated, and the defendant's articles of incorporation and by-laws, and the decisions of the courts of the State of New York, the defendant association is not bound to mature its stock within the time specified, if any, on the face of the certificates, say seventy-eight months, or any other fixed period, regardless of the actual value of said stock at the expiration of said fixed period, said value depending, of course, upon the payment of dues made thereon and their *pro rata* share of the earnings; that any period of maturity fixed or indicated in the certificates of stock in any way, is simply an estimated period, and that the association is not required to pay the face value thereof at the expiration of any such period, unless the amount paid in thereon, together with the earnings apportioned thereto, shall equal the par value of the shares. I base my opinion on the statute under which the defendant is incorporated, its articles of incorporation and by-laws, and the decision of the supreme court of the State of New York in the case of O'Malley *vs.* People's Building, Loan and Savings Association, 92 Hun., 572, and similar decisions of other States under like statutes.

STATE of SOUTH CAROLINA,
*County of Greenville.*

In the Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant.

STATE OF NEW YORK,
*County of Onondaga,* } *ss:*

62 David C. Visscher, being duly sworn, says that he is the actuary and assistant secretary of the said Eastern Building and Loan Association of Syracuse, New York; and has been such for the past twenty months; and has been connected with said asso-

ciation for the past eight years, and as such assistant secretary has charge of all the books, papers and documents of said association. That Charles A. Pooler, who is secretary and general manager of said association, is seriously ill at his home in the city of Syracuse, New York, and has been confined to his home for over a month; and that it would be impossible at this time to obtain his evidence and affidavit for use in the trial of this case before the master.

Deponent further says that he knows of the certificate of stock issued to D. W. Ebaugh, bearing date 1st day of April, 1892, and is thoroughly acquainted with all the subsequent transactions had between said association and said Ebaugh up to the present time. Deponent says that he knows the condition and value of said stock; the payments which have been made thereon, and the sums deducted therefrom for the expenses of said association; and all other matters relating to the same.

Deponent further says that during the month of March or April of the year 1892, the defendant association had no agent authorized, or instructed, or directed by it to make any representations or statement to said Ebaugh, or any other person, as to the effect of the contract which said Ebaugh, or any other member, might enter into with said defendant; and especially that said defendant association had no agent or representative who was authorized to state that this stock, or any of its stock, would, upon paying at the rate of seventy-five cents per month for seventy-eight consecutive months, mature said stock, or that the company would pay to the said Ebaugh the full par value of each share of stock, to wit: $100; and that no agent had any authority to represent that such stipulation would be binding upon the defendant company, and that the same is valid under the laws of the State of New York; and that until
63 this suit was brought, the defendant and its various officers never knew that the plaintiff claimed that any such representations were made; and if such representations were made by any person to said Ebaugh, the same were made without the knowledge of this defendant, or of any of its officers, and without any authority, right or power from this defendant to make any such statements or representations to the plaintiff to induce him to subscribe for the shares of stock in controversy in this case.

Deponent further says that this defendant never knew, when said plaintiff was making his payments on said stock, that the plaintiff relied upon the representations stated in the complaint in this action; and that the defendant never knew that the payments made by plaintiff to defendant were made under any misapprehension as to the effect or validity of any contract that was made and entered into between the said Ebaugh and this defendant.

Deponent further says that the defendant has never declined to perform its agreement with the plaintiff in this action; but is at all times ready and willing, and has always been, to carry out the contract which it made with the plaintiff in all respects; that the defendant has never declined to give to the plaintiff a statement as to how much money he may expect under his said contract, but, on the contrary, has advised the plaintiff that his stock would be paid

in its order out of one-half of the monthly receipts applicable to withdrawal and matured stock; and that no distinction has ever been made between plaintiff's claim under his certificate of stock and similar claims of other shareholders of the defendant association.

Deponent further says that the defendant company has never endeavored by various devices to depress the value of the plaintiff's stock in order to secure from him a surrender of his rights against the defendant company for a very inadequate consideration; and that the defendant has never denied its liability to the plaintiff according to the terms of the contract, but, on the contrary, has
64 insisted that this construction of the contract was right, and that the rights of the plaintiff and of the defendant were each measured by the terms of such contract.

The deponent further says that at the time this action was commenced, the plaintiff's stock had not matured and become worth the sum of $100 per share; that said stock has not yet matured and become worth $100 per share, together with a full proportion of earnings of the defendant to which the same is entitled, less the *pro rata* share of expenses and losses of the defendant association properly chargeable against said stock; that deponent has charge of the withdrawal list of the defendant association, and that on October 19, 1898, the plaintiff's certificate of stock was received at the home office of the defendant in the city of Syracuse, New York, and placed on file on the withdrawal list of the defendant association as of the date of October 19, 1898, that being the exact date on which the same was received by defendant association; that accompanying said certificate of stock was a letter from plaintiff, as follows:

"GREENVILLE, S. C., *Oct.* 15, 1898.

"Eastern Building and Loan Association, Syracuse, N. Y.

"DEAR SIRS: In reply to your favor of the 12th inst., please find certificate No. 12170 enclosed, and signed as directed. Kindly forward check at your earliest convenience for amount. Please acknowledge receipt of same, and oblige,

"Yours truly, D. W. EBAUGH."

That prior thereto, and on October 12, 1898, the defendant association had written to said D. W. Ebaugh at Greenville, S. C., a letter as follows:

"OCTOBER 12, 1898.

"Mr. D. W. Ebaugh, Greenville, S. C.

"DEAR SIR: Replying to your favor of the 11th inst., I beg to say it is not necessary that any amount be filled in the with-
65 drawal blank on your certificate; simply sign your name the same as the certificate is made out on the line opposite the word 'seal,' and have your signature witnessed. Upon receipt of your certificate, proper acknowledgment will be forwarded.

"Yours truly, N. C. VISSCHER,

"*Assistant Secretary.*"

Deponent further says that said certificate of plaintiff's so received by said association bore upon the back the following receipt, to wit:

"The within-mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, New York, are hereby withdrawn; and I have this day received the sum of $— in full of the amount due me by reason of said withdrawal.

"Dated at Greenville, S. C., October 15, 1898.

"D. W. EBAUGH. [SEAL.]

"Witness:

"FRANK NICHOLS."

That previous to that time the plaintiff had written to the defendant association, under date of September 5, and soon thereafter the association wrote Mr. Ebaugh as follows:

"Mr. D. W. Ebaugh, Greenville, S. C.

"DEAR SIR: In reply to your favor dated September 5, I beg to say that if you desire to file your certificate for withdrawal it will be necessary for you to forward the same to this office, properly receipted in the withdrawal space on the back thereof. Upon its receipt, if in good standing, it will be filed and proper acknowledgment forwarded you.

"It will be some time, however, before you can expect payment of the withdrawal on account of the large number already on file.

"Yours truly, N. C. VISSCHER,

"*Assistant Secretary.*"

66 That prior to September 24, 1898, the defendant association had received from Mr. Ebaugh, the plaintiff, a letter under date of September 20, enclosing express money order for $7.50, to which the association responded as follows:

"SEPTEMBER 24, 1898.

"Mr. D. W. Ebaugh, Greenville, S. C.

"DEAR SIR: Your favor of the 20th inst., enclosing express money order for $7.50, at hand. You state in your letter that this amount finishes your contract, and request us to forward to you check for $1,000. You were duly notified in communication, under date of August 12, that the certificate would not mature in the original specified time of seventy-eight months; and it will be necessary for you to continue payments beyond that period in order to secure the maturity value. The facts given you in that letter apply to the present time, and you must either continue your payments or file the certificate for withdrawal.

"Yours truly, N. C. VISSCHER,

"*Assistant Secretary.*"

On October 19, 1898, the association wrote plaintiff as follows:

"Mr. D. W. Ebaugh, Greenville, S. C.

"DEAR SIR: I beg to acknowledge the receipt of your certificate

No. 12170, for withdrawal; the same has been filed and will be paid in its regular order, as provided by the articles of incorporation and by-laws. The payment of withdrawals is governed by the rules of the association and not in accordance to the demands of the membership; as the constitution and by-laws provide that but one-half of the receipts upon stock payments shall be used for that purpose, as appears below in printed form, the balance being permitted to be used to carry on the business of the association with its members who do not desire to withdraw.

"Yours truly,

N. C. VISSCHER,
"*Assistant Secretary.*"

67 That on August 12, 1898, the association mailed a letter to the plaintiff as follows:

"D. W. Ebaugh, Greenville, S. C.

"DEAR SIR: I am obliged to inform you that the earnings of the association have been insufficient to mature your stock in the time estimated, seventy-eight months, by a large margin. It, therefore, occupies no different position in its rights than the same class of certificates issued since July, 1894, which are estimated to mature in one hundred months, with one hundred regular monthly payments made thereon. If you desire to realize the maturity of this stock, it will be necessary for you to continue payments thereon for a period as estimated. While the inability of the association to fulfill the erroneous estimates assumed under the earlier management of the company, we appreciate is a disappointment to the holders thereof, still, nevertheless, they should give consideration to the fact that to have carried out such an expectation would have been not only far more than has ever been accomplished by any other building and loan association, but the further fact that if these certificates mature in one hundred months, with one hundred payments, they will yield in profits quite as much as is being accomplished by any other company.

"Yours truly,

C. A. POOLER,
"*Secretary and General Manager.*"

Deponent further says that after plaintiff's stock certificate was received, as aforesaid, the same was, as has been stated, placed upon the regular withdrawal list, where it now remains, waiting its order in payment with the other certificates filed for withdrawal by members of this association; and that the same has so remained on file ever since its receipt on October 19, 1898, and has never been withdrawn or requested to be withdrawn by the plaintiff; that the total value of plaintiff's certificate on the 1st day of January, 1899,
68 was $600.40; that the amount of withdrawals on file and unpaid on January 1st, 1899, was $390,000; and that when plaintiff filed his certificate for withdrawal on October 19, 1898, there was, in round numbers, $350,000 of withdrawals on file, received and filed by the defendant prior to the receipt and filing of plaintiff's certificate of stock; that the association, under its articles and by-laws, is not required to pay out upon withdrawal and matured stock

more than one-half of its monthly receipts on stock payments; that the average monthly payments on withdrawals for the six months preceding January 1st, 1899, was $3,514.58; that the average monthly payments on withdrawals for the six months since January 1, 1899, amounts to $2,599.19; and that plaintiff's withdrawal will be paid in its regular order when reached upon the withdrawal li-ts of said association. That plaintiff's membership in said association has never ceased or terminated; and that plaintiff is entitled only to the book value of his stock, as appears upon the books of the defendant association, when reached under the rules and regulations of the defendant in its regular order of payment.

(Signed) NATHAN C. VISSCHER.

Subscribed and sworn to before me, this 25th day of July, 1899.

(Signed) NELLIE A. POTTER,
*Notary Public, Onondaga Co., N. Y.*

*Articles of Incorporation.*

Whereas, articles of incorporation of the Eastern Building and Loan Association of Syracuse, N. Y., were heretofore filed with the clerk of the county of Onondaga, in the State of New York, under and in pursuance of an act of the legislature of the State of New York, entitled "An act for the incorporation of building, mutual loan and accumulating-fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof, and

Whereas, certain informalities and omissions exist in the original certificate of incorporation,

69 Now, therefore, we, the directors of said corporation, under and in pursuance of an act of the legislature of the State of New York, passed April 5th, 1870, entitled "An act for the relief of corporations organized under general laws," do hereby make and file the following amended certificate of incorporation, viz:

*Articles of Incorporation.*

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating, fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof and supplementary thereto, under the name of the Eastern Building and Loan Association of Syracuse, N. Y., for the purpose of engaging in and carrying on business as hereinafter mentioned.

I.

The name of this corporation shall be the Eastern Building and Loan Association of Syracuse, N. Y.

II.

This association is formed for the purpose of purchasing real estate; for the erection of buildings or other improvement, and the

improvement of lands; for aiding members in acquiring or improving real estate, or of removing encumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances; and for the purpose of conducting the general business of a building and loan association and providing the advantages usually expected from savings banks and other institutions of like character.

III.

70 The principal place of business of this association shall be located at Syracuse, N. Y. But branches or agencies may be established and business done in any part of the State of New York or in any State or Territory of the United States as the board of directors may direct.

IV.

The time of the regular meeting of this corporation shall be the second Monday in May of each and every year, and special meetings may be called at any time upon the written call of a majority of the directors of this association or of ten or more shareholders therein. A quorum shall consist of not less than a representation of at least five hundred (500) shares of stock of said association; and not less than one-half the number of said directors in cases where a directors' meeting shall be found necessary.

V.

The qualification of members shall be as follows: Any person upwards of twenty-one years of age, or parents or guardians of children, may become members of this association, and shall become such upon subscribing for two or more shares of stock in this association, as prescribed by the by-laws thereof.

VI.

The management of all the business of the association shall be vested in a board of nine directors, who shall be chosen at each regular meeting. Said board shall have full power and authority to fill all vacancies, and make such by-laws, rules and regulations for the general management and conduct of the business of this association as they may deem necessary. The officers of this association shall consist of a president, vice-president, secretary and general manager (combined), and treasurer, who shall be chosen by and from the board of directors at their first regular meeting after
71 the annual meeting of the association; also an attorney, who shall at the same time be chosen by the board of directors from their number or from one of the stockholders. Said officers to receive the vote of a majority of said board present at any meeting. And said board of directors shall in the same manner also designate a trustee, who shall be chosen at its first regular meeting.

Any of the officers, the trustee and attorney of this association, may be removed and suspended from office by a majority of the board of directors and a majority of the number of shares of stock of said association.

VII.

The duties of the said several officials shall be as follows: The directors shall pass upon the sufficiency of all property offered as security for loans, and attend generally to the financial affairs of the association, as provided by the by-laws to be hereafter adopted.

It shall be the duty of the president to preside at all meetings of the shareholders and of the board of directors; to sign certificates of stock and sign all releases of mortgages; and he shall perform all other duties pertaining to said office as provided by the by-laws to be hereafter adopted.

The vice-president shall perform all the duties of the president in his absence.

It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all moneys paid into the association and pay the same over to the treasurer, and take his receipt therefor; he shall keep all accounts of the association; conduct all correspondence; sign all orders on the treasurer, and sign all certificates of stock, under the direction of the board of directors. Whenever required by the board, he shall submit a statement of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall receive
72 from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association, and make proper entry of the same in books kept for that purpose. He shall attend to all printing and publication and have general supervision over all agents or agencies of this association, and any further duties as may be prescribed by the by-laws to be adopted.

It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors. He shall keep correct account of all moneys received and paid out by him. He shall make to the board of directors when required a statement in writing of the full business of his office.

It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans and certify in writing to the board of directors all facts that might affect the interests of the association in case such security may be accepted. He shall prepare all papers incident to making loans and secure loans by the association and cause them to be properly executed, and such other duties as may be required by the by-laws of this association.

VIII.

All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

IX.

The entrance fee of new members and new shares shall be one

dollar ($1.00) per share of stock in said association. The monthly dues per share shall be seventy-five cents ($.75).

There shall be a transfer fee of two dollars ($2.00) on each and every certificate of shares transferred.

73 The fines for non-payment of dues shall be ten cents ($.10) on each and every share of stock unpledged, and twenty cents ($.20) on all stock pledged for each and every month the payment may be in arrears.

In case a monthly payment on any share shall become past due and payable for a period of six months or more, such share shall be sold for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines, and the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

X.

The advances or loans made to any member of this association shall not exceed the face value of the stock owned by him, and except as hereinafter stated shall be upon satisfactory first mortgage, real-estate security, and be under such rules and regulations as the by-laws and the board of directors may require.

Loans may be made upon shares in good standing and in force one year to an amount not exceeding 90 per cent. of the monthly dues paid to the association upon such shares as collateral security, and upon such note, bond or other obligation, or instrument, as the board of directors and by-laws may require.

A uniform premium of 10 per cent. shall be paid and allowed by the borrower upon each loan; and upon all loans the borrower shall pay interest at the rate of 5 per cent. per annum as a redemption fee, and the same shall be paid on the last Saturday of each month during the continuance of said loan at the principal office of the

74 association. In case the monthly instalments on loans are not paid as aforesaid, then interest at the rate of 6 per cent. per annum, payable semi-annually, shall be collectable thereon; and in case default shall be made in the payment of the regular monthly instalments, fees or dues, the association may compel payment of principal, interest and premium, assessments, fees or dues, by proceeding upon the note or other obligation and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association.

Pledged shares may be transferred, upon consent of the association, by transferring the mortgage security upon payment of the fee therefor, provided all assessments, instalments, dues and charges thereon are paid to date, and subject to such other regulations, if any, as the by-laws may provide.

Any shareholder may have his mortgage transferred or changed from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

Loans may be prepaid and the mortgaged property released upon application to the association and giving thirty days' notice in writing of the intention. An equitable discount shall be allowed therefor, to be determined by the board of directors.

XI.

Unpledged shares may be transferred upon consent of the association, upon payment of the fee therefor, provided all dues and claims thereon have been paid to date.

XII.

Shares which are not pledged may be withdrawn before
75 maturity, provided the same are in good standing and all dues and fines have been paid to date. The association shall have the right of at least thirty days' prior notice of intention to withdraw. Upon such withdrawal, the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid, with such additional interest, if any, as the by-laws may provide, except that the same shall not exceed the net earnings of said stock. But in no event shall the association be required to pay to withdrawing members more than one-half of the net receipts of the monthly instalments paid in during the month in which the withdrawals occur. In no case shall a withdrawal from the loan fund exceed the amount of the instalments paid thereto, together with the estimated amount of the earnings upon the same.

XIII.

The association shall have the right to mature any shares of one year's standing, and to issue in the place thereof paid-up certificates of shares, payable at maturity, with interest at the rate of 6 per cent. per annum, or at maturity of stock in pledge, payable at maturity of loan.

It shall also have the right to cancel any unpledged certificate of shares after it has been in force three years, upon the payment to the holder of the total amount of instalments paid thereon, together with interest thereon at the rate of 8 per cent. per annum to date of cancellation.

XIV.

The qualification of voters at a meeting shall be that they shall be members in good standing, as provided by the by-laws, and be entitled to one vote for each share of stock held. Voting shall be by ballot, and the highest number of votes shall elect.

Any member may authorize another member by written proxy to vote his stock at any one meeting, provided such proxy shall
76 specify the particular meeting at which the same is to be used, and the same shall be filed with the secretary at the home

office at least twenty days before the opening of such meeting. In all other cases the proxy given with the application for stock shall be operative.

XV.

The amount to be paid to the owners of shares at maturity shall be one hundred dollars ($100) per share.

XVI.

The by-laws of this association shall not be amended except at an annual meeting of said association and by a majority vote of the stock outstanding.

XVII.

The amount of capital stock of this association shall be fifty millions of dollars ($50,000,000), divided into shares of one hundred dollars ($100) each, as provided by the by-laws.

The funds of this association shall be divided into two classes, which shall be called, respectively, the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance, or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payment on stock, and these funds so constituted shall be devoted to the payment of operating expenses, and said insurance and taxes. The loan fund shall consist of all receipts which do not go into the expense fund, as hereinbefore provided, together with all interests and accumulations from whatever source.

No money can be drawn from the loan fund for any other
77 purpose than the making of loans, on security, as provided by the by-laws, and to pay amounts due withdrawing shareholders.

The funds of the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks of the State of New York are permitted to take, or deposited at interest in the savings banks, trust companies or duly incorporated banks of said State, and which are in good standing.

XVIII.

The stock of this association may be issued in series, if the board of directors may so decide.

The directors of this association may enter into such contracts and agreements, and appoint such agents for its business management, as they may deem for the best interests of its affairs.

XIX.

These articles of incorporation may be amended at any annual or special meeting of the association, provided the same is previously

endorsed by resolution of the board of directors, and adopted by a majority vote of stock of the association.

Dated Syracuse, February 22d, 1890.

HENRY H. LOOMIS.
DWIGHT H. MURRAY.
JNO. J. W. REYNOLDS.
LUCIUS M. KINNE.
WILLIAM H. EMORY.
CHARLES A. POOLER.
ALEX. H. HUBBS.
ARTHUR B. KINNE.
ROBERT W. ANDREWS.

STATE OF NEW YORK, } ss:
*Onondaga County,* }

On this February 22d, 1890, before me, the subscriber, per-
78 sonally appeared Henry H. Loomis, Dwight H. Murray, Jno. J. W. Reynolds, Lucius M. Kinne, William H. Emory, Charles A. Pooler, Alexander H. Hubbs, Arthur B. Kinne and Robert W. Andrews, to me known to be the persons named in, and who executed, the foregoing certificate, and duly and severally acknowledged that they executed the same.

E. A. CHRISTY,
*Com'r of Deeds, Syracuse, N. Y.*

The foregoing articles duplicated in the original, signed and dated as follows:

Dated Syracuse, February 22d, 1890.

HENRY H. LOOMIS, *President.*
DWIGHT H. MURRAY,
*Vice-President.*
JNO. J. W. REYNOLDS,
*Sec. and Gen. M'g'r.*
LUCIUS M. KINNE, *Treasurer.*
SAMUEL R. STEARN, *Attorney.*
WILLIAM H. EMORY,
CHARLES A. POOLER,
ALEXANDER H. HUBBS,
ARTHUR B. KINNE,
ROBERT W. ANDREWS, *Directors.*

SYRACUSE, *February* 22, 1890.

At a meeting of the undersigned incorporation of the Eastern Building and Loan Association, held at the rooms of the State Bank of Syracuse, in the Syracuse Savings Bank building, Syracuse, N. Y., the following proceedings were had:

Said Eastern Building and Loan Association effected a temporary organization by calling a meeting to order at 4 p. m. by electing as temporary president Henry H. Loomis and John J. W. Reynolds secretary.

The articles of incorporation, a copy of which is hereto annexed, were duly signed and executed by all present.

By-laws were adopted after a full discussion of the same.
79 The following officers were then elected, as provided by said articles of incorporation and said by-laws:

Henry H. Loomis, president.
Dwight H. Murray, vice-president.
John J. W. Reynolds, secretary and general manager.
Lucius M. Kinne, treasurer.
Samuel R. Stearn, attorney.

Directors: Henry H. Loomis, John J. W. Reynolds, Alexander H. Hubbs, William H. Emory, Dwight H. Murray, Lucius M. Kinne, Charles A. Pooler, Robert W. Andrews, Arthur B. Kinne.

The place of business designated as Syracuse, N. Y., and the location at present 83, 84 and 85 Weiting block.

The articles hereto annexed are a true copy of the certificate of incorporation signed by the foregoing members and incorporators.

JNO. J. W. REYNOLDS,
*Secretary and General Manager.*

Verified.

Eastern Building and Loan Association.

BY-LAWS.

ARTICLE I.

*Name, Object, Location, and Duration.*

SECTION 1. This association shall be known as the Eastern Building and Loan Association of Syracuse, N. Y.

SEC. 2. Its object is to afford its members a safe and profitable investment of their savings, to facilitate the purchase and improvement of real estate and provide the advantages usually expected from savings banks and other institutions of like character.

SEC. 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any State or Territory of the United States where no legal
80 prohibition exists, by authority of the board of directors, to be evidenced by a vote of the majority of the board, and spread upon its records.

SEC. 4. This association shall continue for forty years.

ARTICLE II.

*Capital Stock.*

SECTION 1. The capital stock of this association shall be fifty million dollars, divided into shares of one hundred dollars each.

SEC. 2. All stock shall be issued in monthly series, dated on the first day of the month of its issue. Each shareholder in good standing shall be entitled to one vote for each share of stock held by him, and on which all dues have been paid, at all meetings of the shareholders.

## ARTICLE III.

*Directors and Officers.*

SECTION 1. There shall be elected by ballot nine directors of this association, at the annual meeting thereof, by a majority of the stock represented and voting.

SEC. 2. The officers of this association shall consist of president, vice-president, secretary and general manager (combined) and treasurer, to be elected by and from the board of directors. All vacancies in the board of directors caused by death, resignation or otherwise, and all vacancies from any cause, shall be filled by the board of directors until the next annual meeting of the association.

SEC. 3. The officers and directors of the association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

SEC. 4. All bonds to this association from any officer shall be first approved by the board of directors.

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## ARTICLE IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year, commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

## ARTICLE V.

*Board of Directors, Meetings, and Duties.*

SECTION 1. Stated meetings of the board shall be held monthly on the first Tuesday of each month. Special meetings may be called by the secretary, or by request of two or more members of the board.

SEC. 2. It shall be the duty of the board of directors to pass upon the sufficiency of all property offered as mortgage security for loans, and attend generally to the financial affairs of the association. They shall have the management of the association not otherwise provided for in the by-laws, and the right to disburse such amounts as may be necessary to properly conduct the business of the association. They shall cause the secretary to mail to each shareholder, after each annual meeting, a general statement of the business of the preceding year and a report of the financial condition of the association, as found by them after a thorough examination. A majority of the board shall constitute a quorum for the transaction of any business.

* * * * * * *

## ARTICLE VII.

*Secretary and General Manager.*

SECTION 1. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all money paid into the association, and to pay the same

over from time to time to the treasurer, and take his re-
82 ceipts therefor, and keep all accounts of the association between the association and shareholders; issue all notices; conduct all correspondence; draw and sign all orders on the treasurer, and sign all certificates of stock under the direction of the board.

SEC. 2. Whenever required by the board, he shall submit a statement in writing of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall, under the direction of the board of directors, see to the settlement of all claims and bills, and shall keep insured all interest the association may have in any building or property liable to loss by fire; with the assistance of the attorney of the association, he shall protect its interests in all tax sales or forfeitures or foreclosures of property in which it may hold any interest, and for these purposes is authorized to draw on the treasurer without further action of the board of directors, such payments to be reported at the next meeting of the board of directors. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association, and make proper entry of the same in books kept for that purpose. He shall give bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office and the direction of the board of directors.

SEC. 3. It shall be his duty, as general manager, to attend to all advertising, printing and publications; look after all bonds of agents, local and special; look after all property that is offered for security and report the same to the board, and to have the general supervision over all agencies, to appoint agents, assistants and other necessary help.

## ARTICLE VIII.

### *Treasurer.*

83 SECTION 1. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors, signed by the secretary. He shall keep correct account of all moneys received and paid out by him. He shall deposit with the trustee all abstracts of title, deeds, bonds, mortgages, contracts and other securities belonging to the association. He shall make to the board of directors, when required, a statement in writing or otherwise of the full business of his office. He shall furnish a satisfactory bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office, in conformity with the by-laws and the order of the board of directors.

## ARTICLE IX.

*Attorney.*

SECTION 1. It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans, and certify in writing to the board of directors all facts that might affect the interests of the association in case such security may be accepted.

SEC. 2. He shall prepare all papers incident to making sales and securing loans by the association, cause them to be properly executed, file the same for record in the proper office of the county, and, when so recorded, deliver the same to the secretary, and, in general, do and perform all things incident to his office.

## ARTICLE X.

*Official Bonds.*

SECTION 1. All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

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## ARTICLE XI.

*Funds.*

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorney's fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 2. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided, together with all interest, fines, earnings and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security, as provided by the by-laws, and to pay amounts due withdrawing shareholders.

## ARTICLE XII.

*Eligibility.*

SECTION 1. All new shareholders elected or appointed as directors or officers of this association shall concur in and accept the previous resolutions, agreements and obligations of said association, and shall only become eligible to such position after having performed all personal obligations agreed upon prior to their election or appointment.

SEC. 2. Persons not of lawful age can only become shareholders

through their lawfully appointed guardians, who shall sign the application as provided by law.

## ARTICLE XIII.

### *Elections and Inspectors.*

85 SECTION 1. At the stated meeting of the board of directors next preceding the day appointed for the annual meeting there shall be elected by the board of directors three shareholders, not candidates for election, to act as inspectors thereof, who shall receive the votes, count the same, and report in writing the names of the persons having the greatest number of votes, who thereupon shall by the president be declared duly elected, whereupon the secretary shall give notice to such directors.

Any member may authorize another member by written proxy to vote his stock, provided that all proxies shall be filed with the secretary at the home office at least twenty days before the opening of the meeting at which they are to be used.

## ARTICLE XIV.

### *Contract of Members.*

SECTION 1. The terms and conditions expressed in the certificates of stock, in connection with the application for membership, and the by-laws of this association, form the contract between this association and each shareholder therein.

SEC. 2. All persons desiring to become shareholders of this association must fill out, sign and deliver to the secretary an application according to the form adopted by the association, which application shall be a part of said contract with this association. Such applicant shall also pay a membership fee of one dollar per share for each and every share held by him.

SEC. 3. All loans made by this association shall be upon satisfactory note and first mortgage, secured on real estate, together with fire-insurance policy in some approved company, if upon improved property, and for every one hundred dollars of loan made to a shareholder, who shall in addition thereto transfer in pledge to the association one share of the stock held by said shareholder as collateral
86 security on all loans made by the association to a shareholder. Said shareholder shall pay an interest of five per cent. per annum and a premium of five per cent. per annum of all said loans. All interest and stock payments shall be paid on the last Saturday of each month during the continuance of said loan, and at the same time the shareholders not borrowing shall pay their monthly payments at the principal office of the association.

SEC. 4. Abstracts of title must be furnished by the borrower; also the legal examination and opinion of the attorney of the association that the title to the property offered as security is clear and owned in fee-simple, and he must so report. All such abstracts, searches and attorney's fees, and all fees for recording, drawing and cancelling mortgage, are to be paid by the borrower.

SEC. 5. Borrowing members who shall neglect to pay any instalments on stock and interest on their loans, as the same become due, shall pay to the association a fine of twenty cents per month on each one hundred dollars that they have borrowed from the association. Non-borrowing members who shall neglect to pay their monthly instalments promptly shall pay to the association a fine of ten cents per month on each share of stock owned by them.

SEC. 6. Should a shareholder whose property is mortgaged to the association desire to release the same by prepayment of his indebtedness, he may, on application to the association, be allowed to do so by giving thirty days' notice in writing of such intention, and be allowed an equitable discount therefor, to be fixed by the board of directors.

SEC. 7. Any shareholder may have his mortgage transferred from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

SEC. 8. Any shareholder may sell or transfer property mortgaged to the association, and the purchasers must assume all stip-
87 ulations, agreements and conditions of the original mortgagor by a proper instrument in writing to be paid for at his own expense. Said person purchasing must also purchase the shares held by said shareholder, which will be transferred on the books of the association to said purchaser, all assessments or instalments thereon being paid up to time of transfer, upon payment of fees therefor; or the association may accept a new mortgage from said purchaser to secure the former loan, until the expiration of said loan, upon the same or other sufficient property, upon payment of all fees and expenses thereof.

SEC. 9. All deeds, notes, leases, or other written instruments requiring to be executed, and all satisfactions and releases of mortgages and other indebtedness ordered by the board of directors, shall be signed in the name of the association by the president, or, in his absence, by the vice-president, and countersigned by the secretary, and, when necessary, acknowledged by the president and secretary of the association in their official capacity, and have the corporate seal attached.

SEC. 10. If any shareholder or any person shall neglect to pay the interest or instalment on his loan, or the regular monthly instalments, fees or dues for six (6) months, the secretary may compel payment of principal, interest and premiums, assessments, fees or dues, by proceeding on his note and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the said shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association. Punctuality and strict performance on the part of all members, borrowers and shareholders, in payment of fines, dues, interest, loans and premiums, are made the essence of the contract.

SEC. 11. Any shareholder may pay his instalments, interest and

premium in advance, or deposit with the association a certain
88 sum to be used for such payments as they may fall due, and
the association will receipt for the same and notify when said deposit is exhausted.

If members make payments in advance for a period of six months and not over two years, a discount may be allowed at the rate of seven per cent. per annum for the time each payment is actually advanced.

SEC. 12. Any shareholder who has made a loan by giving taxable property as a security shall be bound to pay all State or city or other taxes or assessments as they become due, in addition to all other payments, and his failure to do so will make his loans, notes, mortgages, premiums and interest at once fully due and payable at the option of the board of directors.

SEC. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or of his assigns to the association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

SEC. 14. All shareholders shall pay, or cause to be paid, a monthly instalment of seventy-five cents on each share named in their certificate, until the same shall be fully paid; said instalment to be paid to the association on or before the last Saturday of each month. Shareholders are required to pay monthly instalments without notice.

SEC. 15. In case of change of residence or post-office address, name of the shareholder, or his or her legal representative, notice thereof, in writing, shall be given at once to the secretary of the association.

SEC. 16. All remittances for advance instalments, premiums, monthly instalments, fines and penalties, interest and premiums, and
all other payments, shall be made to the secretary of the as-
89 sociation at the home office, and in registered letter, express or money order, or drafts. Individual checks shall not be receivable.

SEC. 17. Should the board of directors require further evidence of a claim than is given in the proof furnished on the same, it hereby reserves the right to extend the time of payment until such necessary proof is furnished and investigation is made. The association shall have sixty days after the filing of the proofs of a claim, and the approval thereof by the board of directors, in which to pay the same, and this applies to claims maturing by death as well as to maturity of stock.

SEC. 18. If shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments; after six payments have been made on stock, the holder thereof can withdraw his monthly instalments that have been paid to the loan fund, with interest at the rate of six

per cent. per annum, seven per cent. after two years and eight per cent. after three years.

SEC. 19. Any shareholder wishing to withdraw his stock may be allowed to do so at any time, but the association shall not be required to pay out more than one-half of the net receipts of the monthly instalments paid in that month to withdrawing members.

SEC. 20. The association reserves the right to mature any certificate at any time after one year, and to issue a paid-up certificate of shares, payable at maturity of stock, with interest at the rate of six per cent. per annum, or at maturity of stock in pledge, payable at time of maturity of loan.

The association reserves the right to cancel any unpledged certificate after it has been in force three years, upon the payment to the owner of the total amount of instalments paid thereon, together with eight per cent. per annum as added dividend.

SEC. 21. And it is hereby expressly agreed between all
90 shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity, shall be accepted as full payment of all claims on their certificate or against this association.

SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share, payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent. annual interest from the date of issue of said stock.

SEC. 23. Paid-up stock shall be indorsed by the trustee, and cannot be withdrawn for one year from date of issue.

## ARTICLE XV.

### *Loans.*

SECTION 1. Each shareholder, for each share named in their certificate, shall be entitled to a loan of one hundred dollars from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received, and be examined and approved, or rejected, by the board in their regular order.

SEC. 2. All shares must be in force three months before said shareholder shall be entitled to a loan. All applications for loans are part of the contract of the shareholders with this association. Nothing herein contained shall prevent the board of directors from loaning funds of the association to any member in greater sums than the above, provided upon approved securities.

## ARTICLE XVI.

### *Local Boards.*

91 SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town

may organize a local board or branch of the association. The officers of the local organization shall consist of from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined), and attorney; all of whom must be shareholders in the association; these officers shall hold office for one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board: Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local-board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

## ARTICLE XVII.

*By-laws—Amendment.*

SECTION 1. No amendment shall be made to these by-
92 laws unless previously indorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

STATE OF SOUTH CAROLINA, }
*County of Greenville.* }

In Court of Common Pleas.

DAVID W. EBAUGH, Plaintiff,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION, Defendant. }

The defendant is a corporation organized under the laws of New York, with its principal place of business in the city of Syracuse. In the early part of the year 1892 it began business in the State of South Carolina, and organized in the city of Greenville a local branch of said association. The plaintiff is a resident of the city of Greenville, in said State. The defendant's agent approached the plaintiff for the purpose of inducing him to become a stockholder in the defendant company. The agent exhibited to the plaintiff a form of

the certificate of stock, which contained, among other things, this promise:

"Eastern Building and Loan Association of Syracuse, New York, agree to pay said shareholder, or his heirs, executors, administrators or assigns, the sum of one hundred dollars for each of said shares, at the end of seventy-eight months."

At the same time the agent exhibited to him certain printed circulars, or literature, of the defendant company. One of these circulars was entitled "The definite contract plan." This circular stated:

"Q. What amount is deposited monthly?
"A. Seventy-five cents per share. * * *
"Q. When will the shares reach their par value?
"A. Shares mature in exactly six and one-half years.
"Q. How much will a member have to pay in altogether?
"A. On a basis of ten shares (one thousand dollars maturity value) he will have paid in five hundred and ninety-five
93 dollars ($595) and receives one thousand dollars." * * *

"All shares on which payments are made are regularly matured at the expiration of seventy-eight months (six and one-half years) from date of certificate. * * *

"*Illustration*

"Showing costs and profits to the investor of ten shares of $1,000, six and a half years, at time of maturity.

| | |
|---|---|
| "He pays a membership fee of $1.00 per share..... | $10 00 |
| "He pays monthly instalments of $7.50 per month for 78 months, $7.50 x 78..... | 585 00 |
| "Total amount invested..... | $595 00 |
| "He receives in cash at maturity..... | 1,000 00 |

* * * "The only association making a contract definite in every particular. * * * Stock matures in seventy-eight months."

On reading the circulars and after listening to the persuasive talk of the agent, the plaintiff was induced to become a subscriber for ten shares of stock. Thereupon the certificate sued upon was issued to him. This certificate is dated on April 1st, 1892. It certifies that "D. W. Ebaugh, of Greenville, county of Greenville, and State of South Carolina, is hereby constituted a shareholder of the Eastern Building and Loan Association of Syracuse, New York, incorporated under the laws of New York, and holds ten shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association, and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract; and the said Eastern Building and Loan Association of Syracuse, New York, agree to pay to said shareholder, or his heirs,

executors, administrators or assigns, the sum of one hundred
94 dollars for each of said shares at the end of seventy-eight months from the date hereof."

Ebaugh paid the entrance fees, and continued to pay the monthly instalments until seventy-eight months had elapsed. The last payment was made on October 1st, 1898. In subscribing to this stock and in making these payments, Ebaugh trusted to the statements contained in the circular and to the promise made in the certificate. About one month before the last payment was made, the association wrote to Ebaugh, stating that they could not carry out the contract, and stating that they could not pay him one hundred dollars upon the end of seventy-eight months, but that he would have to continue making payments. In reply to this, Ebaugh wrote that he had made a definite contract with the association, and expected them to comply with its terms. A short time after making the last remittance, he signed a blank receipt upon the back of the certificate, and sent the same to the association, with the request that they forward him a check for the money due him. The association refused to make payment, and on January 17, 1899, this action was commenced to recover from the association the sum of one thousand dollars, with interest thereon from October 1st, 1898. Certain property of the defendant company in this State was attached in said action.

The defendant made answer, alleging that there was no contract to mature the stock at a definite period, but that it was only estimated that the stock would be matured in seventy-eight months. It also claims that any promise to mature the stock within a definite time would be contrary to their by-laws and charter, and contrary to the laws of New York.

By agreement of counsel, all issues of law and fact were referred to Oscar Hodges, a member of the bar at Greenville, as special referee. Mr. Hodges took testimony, and heard argument, and
95 filed his report, wherein he concludes "that the plaintiff is entitled to recover judgment against the defendant for the sum of one thousand dollars, with interest from October 15th, 1898, at the rate of seven per cent. per annum, and for the costs of this action."

To this report the defendant filed certain exceptions. After hearing argument, I am satisfied that the report of the referee is correct in every particular, and the exceptions are hereby overruled. The defendant certainly made definite assurances in those circulars, and a definite promise as to the maturity of stock; that if the plaintiff would pay the entrance fees, and his monthly dues for seventy-eight months, that at the end of that time it would pay to him one hundred dollars for each share of stock taken by him. These assurances and this promise were made for the purpose of procuring the plaintiff as a stockholder. This promise was definite. The plaintiff relied upon it, and made the payment of his entrance fees, and his monthly dues. The association knew that the plaintiff was relying upon its promise, and allowed him to make all these payments and to incur the liability of a stockholder. It received the full benefit of this transaction, and it cannot now be heard to say that the con-

tract was contrary to its by-laws, or its charter. Even if this contract were in excess of its charter powers, the association would, nevertheless, be bound by it, inasmuch as it received the full benefit thereof.

In the cases of Williamson *v.* Eastern Building and Loan Association, and Wheeling & Bonnoitt *v.* Eastern Building and Loan Association, these same questions were raised. The supreme court had before it the same circulars, the same certificate, the same by-laws, and the same matters of law, as were introduced in evidence in this case, and its judgment was that the defendant association was bound to the full extent of its promise. These cases conclude all the issues here, and render unnecessary a further discussion of the principles involved.

96 This is a law case, and it will be necessary to have judgment entered regularly upon this order.

It is, therefore, ordered and adjudged that the plaintiff, David W. Ebaugh, do recover of the defendant, Eastern Building and Loan Association of Syracuse, New York, the sum of one thousand dollars, with interest from October 15, 1898, at the rate of seven per cent. per annum, now amounting to one thousand and eighty dollars, together with costs of this action, and that the plaintiff be, and he is hereby, permitted to enter judgment for said sum and costs.

ERNEST GARY,
*Judge Fifth Circuit.*

Columbia, S. C., January 24th, 1900.

Written notice of intention to appeal duly given.

*Exceptions.*

1. His honor erred in not deciding that the contract must be governed and construed by the laws of the State of New York, when the question was raised by the pleadings.

2. That his honor erred in not deciding the contract in question was to be sought for in the laws of New York, the defendant's articles of incorporation, by-laws, the certificate, its terms and conditions, and the application for membership, when the question was raised by the pleadings.

3. That his honor erred in not giving full faith and credit to the laws of the State of New York, under art. 4, sec. 1, of the Constitution of the United States, and sec. 905 of the Revised Statutes of the United States.

4. That his honor erred in holding that the defendant was liable on the certificate as an unconditional promise to pay the maturity value of $100.00 per share at the expiration of seventy-eight months,
97 & 98 regardless of the earnings of the defendant association, thereby failing to give full faith and credit to the laws of the State of New York, under art. 4, sec. 1, of the United States Constitution, and sec. 905 of the Revised Statutes of the United States.

5. That his honor erred in holding that a corporation chartered under chapters 122 and 564 of the Laws of New York, which issued a certificate containing a fixed period of maturity, would not be

heard on the plea of *ultra vires*, and would be bound thereby, thereby failing to give full faith and credit to the laws of New York, under art. 4, sec. 1, of the Constitution of the United States, and sec. 905 of the Revised Statutes of the United States.

6. That his honor erred in holding that the certificate of stock and literature issued by the defendant represented that the defendant promised unconditionally to pay the plaintiff $100.00 for each share of stock at the expiration of seventy-eight months. It being submitted that what was said relative to the maturity of stock in that time was merely an expression of opinion as to the time it would take the earnings of the defendant to bring the stock up to the par value of one hundred dollars, and on which no legal reliance could be placed.

7. That his honor erred in holding that the defendant was estopped by reasons of misrepresentations, and then giving judgment to plaintiff on the contract for the full amount claimed, which I respectfully submit is to the plaintiff's advantage.

We hereby agree that the foregoing shall constitute the case for the supreme court on appeal in the above-stated action, and also the return required by law.

T. H. SPAIN,
*Appellant's Attorney.*

99 THE STATE OF SOUTH CAROLINA:

Supreme Court.

DAVID W. EBAUGH, Plaintiff, Respondent,
*vs.*
EASTERN B. & L. ASS'N, &c., Defendant, Appellant. } 4566.

Affirmed.
Opinion—Eugene B. Gary, A. J.

We concur.

HENRY McIVER, *C. J.*
Y. J. POPE, *A. J.*
IRA B. JONES, *A. J.*

(*Report.*)

Supreme court of South Carolina, clerk's office, Columbia, S. C.

Filed 28 June, 1900.

U. R. BROOKS, *Clerk.*

THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

DAVID W. EBAUGH, Plaintiff, Respondent,
*against*
EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

*Opinion.*

EUGENE B. GARY, *A. J.:*

The facts of this case are fully set forth in the report of the master and the decree of the circuit judge, which will be incorporated in the report of the case.

100 Contracts similar to that which gave rise to the action herein have recently been construed by this court, in the cases of Williamson *v.* Eastern B. & L. Ass'n, 54 S. C., 582, and Welling *v.* Eastern B. & L. Ass'n, 56 S. C., 280. See, also, cases cited in the notes to Williamson *v.* Eastern B. & L. Ass'n, reported in 71 Am. St. Rep., 822.

The appellant contends that the contract must be construed with reference to the laws of New York, and attempts to differentiate this case from those just mentioned on the ground that the answer alleges, and the testimony establishes the fact, that under the laws of the State, the by-laws of the association and not its express agreement must prevail in the interpretation of the contract between the parties.

Both the master and circuit judge found as matter of fact that the laws of New York did not forbid the defendant from entering into an agreement by which the shares of stock would mature in a definite time.

In his report the master says:

"The question as to whether this promise was in excess of the charter powers, was not expressly decided by the supreme court, but that court did decide that even though it were in excess of its charter powers (in the language of B. B. R. R. Co. *v.* McDonald, 60 Am. St. Rep., 172): 'The general rule is that where a private corporation has entered into a contract not immoral in itself, and not forbidden by any statute, and it has been in good faith performed by the other party, the corporation will not be heard on a plea of *ultra vires.*'

"This proposition is fully sustained by the decisions of New York. The plaintiff introduced in evidence the following decisions of that court:

"Whitney Arms Co. *v.* Barlow, 63 N. Y., 62.

"De Grand *v.* American Linen Thread Co., 21 N. Y., 124.

"Diamond Match Co. *v.* Roeber, 106 N. Y., 473.

"This constituted the only evidence before me as to what
101 was the law of New York touching this point. I find as a matter of fact that the law of New York is that where a cor-

poration enters into a contract, that is in excess of its charter powers or is unauthorized by law, it will nevertheless be bound to perform its agreement as contained in the contract, if it suffers the other party to perform his agreement, and receives the benefits and retains them.

"This being the law of New York, it is conclusive of the case at issue."

The report of the master was confirmed in all respects by the circuit judge.

As this is an action at law, the foregoing findings of fact are not subject to review, but are conclusive on this court.

As the laws of New York are not in conflict with the construction which this court has placed upon contracts similar to that upon which the action herein is founded, we fail to discover any facts, causing us to differentiate this case from those hereinbefore mentioned.

It is the judgment of this court, that the judgment of the circuit court be affirmed.

STATE OF SOUTH CAROLINA,
*Greenville County.*

In the Supreme Court.

DAVID W. EBAUGH, Plaintiff, Respondent,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendants, Appellants.

Appeal from circuit court.

Haynsworth, Parker & Patterson, attorneys for respondent.
T. H. Spain, attorney for appellant.

It is the judgment of this court that the judgment of the circuit court be affirmed.

By the court:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

102 I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify that the foregoing are true, full, and correct copies of the "case," judgment, and opinion rendered by the court in the case of David W. Ebaugh, plaintiff, respondent, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant; all of which are now on file in my office.

Given under my hand and the seal of the court, at Columbia, this 28th day of August, in the year of our Lord one thousand nine hundred, and the 125th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

103 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Eastern Building and Loan Association of Syracuse, N. Y., appellant, and David W. Ebaugh, respondent, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein
104 was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

Allowed by—
MELVILLE W. FULLER,
*Chief Justice of the United States.*

[Endorsed:] Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 5 Oct., 1900. U. R. Brooks, clerk.

105 UNITED STATES OF AMERICA, *ss:*

To David W. Ebaugh, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein Eastern Building and Loan Association of Syracuse, N. Y., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this first day of October, in the year of our Lord one thousand nine hundred.

MELVILLE W. FULLER,
*Chief Justice of the United States.*

106 On this 10th day of October, in the year of our Lord one thousand nine hundred, personally appeared Jos. A. McCullough before me, the subscriber, and makes oath that he delivered a true copy of the within citation to D. W. Ebaugh, named herein, on the 6th day of October, 1900.

JOS. A. McCULLOUGH.

Sworn to and subscribed the 10 day of Oct., A. D. 1900.

[Seal of B. A. Morgan, Notary Public, South Carolina.]

B. A. MORGAN,
*Not. Pub., S. C.*

[Endorsed:] Original. I do hereby acknowledge personal service of the within citation this 6th day of October, 1900. D. W. Ebaugh. Witness: H. J. Haynsworth, J. A. McCullough.

107 In the Supreme Court of the United States, October Term, 1900.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error (Defendant Below),
*against*
DAVID W. EBAUGH, Defendant in Error (Plaintiff Below).

*Bond.*

Know all men by these presents that we, Eastern Building and Loan Association of Syracuse, N. Y., a domestic corporation of the State of New York, as principal, and the United States Fidelity & Guaranty Company, a body corporate of Baltimore, Maryland, as surety, are held and firmly bound unto David W. Ebaugh in the full and just sum of three thousand ($3,000) dollars, to be paid to said David W. Ebaugh or his certain attorneys, executors, adminis-

trators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly by these presents.

Sealed with our seals and dated this 23rd day of August, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court for the State of South Carolina, in a suit pending in the said court between said David W. Ebaugh, plaintiff, respondent, against said Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, a final judgment was rendered against the said Eastern
108 Building and Loan Association of Syracuse, N. Y., and the said Eastern Building and Loan Association of Syracuse, N. Y., having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid action, and a citation directed to the said David W. Ebaugh, citing and admonishing him to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Eastern Building and Loan Association of Syracuse, N. Y., shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
[SEAL.] By D. A. PIERCE, *Vice-President.*

Attest: N. C. VISSCHER,
*Ass't Secretary.*

THE UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
[SEAL.] By GEO. F. M. KEOUGH, *Attorney-in-fact.*

STATE OF NEW YORK, } *ss:*
*County of Onondaga, City of Syracuse,* }

On this 23rd day of August, before me, a notary public in and for the aforesaid county, personally appeared D. A. Pierce, to me known and known to me to be the individual described in and who executed the foregoing instrument on the part of the Eastern Building and Loan Association, who, being by me duly sworn, deposed and said that he resided in Syracuse, N. Y.; that he is the vice-president of the corporation described in and which executed the above instrument; that he knew the seal of said corporation, and
109 that the seal affixed to said instrument was such corporate seal, and that it was so affixed by the order of the board of directors of said corporation, and that he signed his name thereto by like order.

HARRY J. HAMLIN,
*Notary Public.* [SEAL.]

STATE OF NEW YORK, } ss:
*County of Onondaga, City of Syracuse,* }

On this 22nd day of August, before me, a notary public in and for the aforesaid county, personally appeared Geo. F. McKeough, to me known and known to me to be the individual described in and who executed the foregoing instrument on the part of the United States Fidelity and Guarantee Company, who, being by me duly sworn, deposed and said that he resided in Syracuse, N. Y.; that he is the att'y-in-fact of the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal, and that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

THOMAS O'DONNELL,
[SEAL.] *Notary Public.*

CITY OF SYRACUSE, } ss:
*County of Onondaga, State of New York,* }

On this 22nd day of August, 1900, before me personally appeared Geo. F. McKeough, attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland and duly authorized to transact business in the State of New York, with whom I
110 am personally acquainted, who, being by me duly sworn, said that he resided in the city of Syracuse, N. Y.; that he is the attorney-in-fact of the United States Fidelity and Guaranty Company; that he knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that he signed said instrument as attorney-in-fact of said company by like authority, and the said Thos. O'Donnell further said that he is acquainted with Geo. F. McKeough, and knew him to be the attorney-in-fact of said company, and that the signature of the said Geo. F. McKeough, subscribed to the said instrument, is the genuine handwriting of the said Geo. F. McKeough, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thos. O'Donnell.

THOMAS O'DONNELL,
[SEAL.] *Notary Public.*

At a meeting of the board of directors of the United States Fidelity and Guaranty Company, held at the office of the company in the city of Baltimore, State of Maryland, on the 19th day of January, A. D. 1899, at which was present a quorum of said directors, duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, James K. McGuire, Geo. F. McKeough, and Thomas Hogan, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the county of Onondaga, in the State of New York, be, and each of them is hereby, authorized

and empowered to sign, execute, and deliver any and all bonds or undertakings for and on behalf of this company, and to attach thereto the seal of the company, the same to be attested by
111 either one of the said attorneys-in-fact above named as occasion may require.

CITY OF BALTIMORE,
*County of* ——, *State of Maryland,* } *ss:*

I, Richard D. Lang, ass't secretary of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at Baltimore, Md., this 20th day of August, 1900.

RICH'D D. LANG,
*Ass't Secretary.*

Oct. 1, 1900.

Approved.
MELVILLE W. FULLER,
*Chief Justice of the United States.*

*Statement of the United States Fidelity and Guaranty Company Rendered to the Department of Justice, Washington, D. C., at the Close of Business June 30th,* 1900.

Commenced business August 1, 1896.

*Assets.*

| | | |
|---|---|---|
| Investments, stocks, and bonds (market value) | $1,037,486.13 | |
| Collateral loans | 643,025.00 | |
| Real estate | 140,232.07 | |
| Cash on hand and in banks | 121,105.64 | |
| 112 Mortgages and other collateral taken account salvage | 72,349.30 | |
| Agent's balances, less commissions | 199,327.82 | |
| Due for subscriptions to department guaranteed attorneys | 19,382.23 | |
| Interest due and accrued | 16,740.62 | |
| | | $2,249,648.81 |

*Liabilities.*

| | | |
|---|---|---|
| Capital stock paid in cash | $1,500,000.00 | |
| Cash deposited for security of risks written | 51,081.67 | |
| Surplus and reinsurance reserve | 698,567.14 | |
| | | 2,249,648.81 |

JOHN R. BLAND, *President.*

GEORGE R. CALLIS, *Secretary.*

STATE OF MARYLAND, }
*City of Baltimore,* } *ss:*

On this fifth day of July, 1900, before me, A. D. Patrick, a notary public in and for the city and State aforesaid, appeared John R. Bland and George R. Callis, president and secretary respectively of the United States Fidelity and Guaranty Company, who being by me severally duly sworn, did depose and say that they are such officers of the said company, and that the above and foregoing is a full, true, and correct statement of the assets and liabilities of the said company as they appeared upon the books of the said company on the 30th day of June, A. D. 1900.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

A. D. PATRICK,
*Notary Public.*

[NOTARIAL SEAL.]

113 In the Supreme Court of the United States, October Term, 1900.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Appellant (Defendant Below),
*against*
DAVID W. EBAUGH, Respondent (Plaintiff Below).

*Assignment of Errors.*

Wherefore comes now Eastern Building and Loan Association of Syracuse, N. Y., plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of South Carolina in the above-entitled cause and assigns error thereto as follows:

1. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial decisions of the State of New York, plead and given in evidence by
114 the plaintiff in error, and in denying the rule of constitutional obligation established by section 1 of article IV of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

2. The supreme court of South Carolina erred in its construction of the contract obligation between plaintiff in error and defendant in error in placing the same construction upon the contract in the above-entitled case that was placed by said court upon the contracts in the cases cited in the opinion of the honorable court, and thereby impaired the obligations of a contract between the parties, refused to give full faith and credit to the public acts, records and judicial proceedings of the State of New York and deprived defendant of its property without due process of law.

3. The supreme court of South Carolina erred in adopting from the report of the master in the above-entitled case, as a part of its opinion therein, the following: "The plaintiff introduced in evidence the following decisions of that court: Whitney Arms Co. *v.* Barlow,

63 N. Y., 62; De Grand *v.* American Linen Co., 21 N. Y., 124; Diamond Match Co. *v.* Roeber, 106 N. Y., 473. This constituted the only evidence before me as to what was the law of New York touching this point. I find as a matter of fact that the law of New York is that where a corporation enters into a contract *that is in excess of* its charter powers, or is authorized by law, it will nevertheless be bound to perform its agreement as contained in the contract if it suffers the other party to perform his agreement and receives the benefits and retains them. This being the law of New York, it is conclusive of the case at issue." Whereas, defendant also placed in evidence certain other cases—under agreement that the New York reports should be referred to and the decisions considered
115 part of the case—and which cases and decisions placed in evidence by defendant, as shown by the record herein, clearly show that the aforesaid laws and decisions of New York as cited by the honorable court are not applicable to building and loan associations such as the defendant, your petitioner (printed case, p. 23, fol. 89).

4. The supreme court of South Carolina erred in refusing to give "full faith and credit" to the public acts, records and judicial proceedings of the State of New York and to the contract entered into between plaintiff in error and defendant in error in the State of New York and under and pursuant to the laws thereof, and by its decision, opinion and judgment in said case the supreme court of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between the plaintiff in error and the defendant in error, and the said decision, opinion and judgment of the supreme court of South Carolina are erroneous in this, that they uphold a rule of law established by the supreme court of South Carolina impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

5. The supreme court of South Carolina erred in holding and deciding that "as the laws of New York are not in conflict with the construction which this court has placed upon contracts similar to that upon which the action herein is founded, we fail to discover any facts causing us to differentiate this case from those hereinbefore mentioned."

6. The supreme court of South Carolina erred in refusing to determine and construe the rights of defendant in error as a stockholder in and member of plaintiff in error, and the contract relations between said plaintiff in error and defendant in error, under the laws and decisions of the State of New York, under
116 which laws and decisions said rights and contract must necessarily be determined and construed; thereby impairing the obligation of the contract herein and refusing to give full faith and credit to the laws of New York.

7. The supreme court of South Carolina erred in holding that the laws of New York did not forbid the plaintiff in error from entering into an agreement by which its shares of stock would mature in a definite time, thus making its certificates of stock unconditional

promises to pay the maturity value of $100 per share at the expiration of seventy-eight months, regardless of the earnings and expenses of the corporation, thereby failing to give full faith and credit to the laws of New York under article 4, section 1, of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

8. The supreme court of South Carolina erred in holding that plaintiff in error, a corporation of New York, incorporated under chapter 122 of the Laws of 1851 of the State of New York as amended by chapter 564 of the Laws of 1875 of said State, was and is bound by an *ultra vires* agreement embodied in a certificate of stock issued to defendant in error, and cannot be heard to question or deny its liability and obligations under such *ultra vires* agreement, notwithstanding that it has been expressly held and decided by the courts of New York that such an agreement is not binding upon this plaintiff in error and corporations of like character. And the supreme court of South Carolina thereby refused to give full faith and credit to the laws and judicial decisions of the State of New York in violation of article 4, section 1 of the Constitution of the United States, and section 905 Revised Statutes of the United States.

9. The supreme court of South Carolina erred in not determining the contract relations between the parties under and in ac-
117 cordance with the articles of incorporation, by-laws, stock certificate, application for membership, the laws of the State of New York, and the decisions thereunder, when the said articles, by-laws, stock certificate, application for membership and the laws and the decisions of the State of New York were plead, relied upon and given in evidence by the plaintiff in error, and when the Federal questions involved were saved by exceptions of plaintiff in error (printed case, pp. 96–97, fols. 382–388).

Wherefore, the said Eastern Building and Loan Association, plaintiff in error, prays this honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of South Carolina entered in the said case of David W. Ebaugh, plaintiff, respondent, *v.* Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid.

EASTERN BUILDING AND LOAN
ASSOCIATION OF SYRACUSE, N. Y.,
*Plaintiff in Error.*

By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
*Its Attorneys.*

D. A. PIERCE,
RUSSELL & WINSLOW,
*Of Counsel.*

118 In the Supreme Court of the United States, October Term, 1900.

Supreme Court of South Carolina.

CLERK'S OFFICE, COLUMBIA, S. C.

Filed 5 Oct., 1900.

U. R. BROOKS, *Clerk*.

EASTERN BUILDING AND LOAN ASSOCIATION of Syracuse, N. Y., Plaintiff in Error (Defendant Below),
*against*
DAVID W. EBAUGH, Defendant in Error (Plaintiff Below).
} Petition for Writ of Error.

In the matter of the petition of the Eastern Building and Loan Association of Syracuse, N. Y., a corporation of New York, for a writ of error directed to the supreme court of the State of South Carolina, for the purpose of bringing to this court by said writ for review the case of—

DAVID W. EBAUGH, Plaintiff, Respondent,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

Wm. Hepburn Russell, Wm. Beverly Winslow, attorneys for petitioner.

D. A. Pierce, Russell & Winslow, of counsel.

119 In the Supreme Court of the United States, October Term, 1900.

EASTERN BUILDING AND LOAN ASSOCIATION of Syracuse, N. Y., Plaintiff in Error (Defendant Below),
*against*
DAVID W. EBAUGH, Defendant in Error (Plaintiff Below).
} Petition for Writ of Error.

In the matter of the petition of the Eastern Building and Loan Association of Syracuse, N. Y., a corporation of New York, for a writ of error directed to the supreme court of the State of South Carolina, for the purpose of bringing to this court by said writ for review the case of—

DAVID W. EBAUGH, Plaintiff, Respondent,
*against*
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

120 Petition for a writ of error to require the supreme court of the State of South Carolina to certify, send up and transmit to this honorable court, under the provisions of section 709 of the Revised Statutes of the United States, the record in said case and the judgment and opinion of the supreme court of South Carolina therein, in order that certain Federal questions arising upon the face of the record, judgment and opinion therein may be reviewed, re-examined, and finally determined by the Supreme Court of the United States.

To the honorable the Chief Justice of the United States and the associate justices of the Supreme Court of the United States:

Your petitioner, Eastern Building and Loan Association of Syracuse, N. Y., a corporation organized and existing under the laws of the State of New York, and having its domicile and corporate situs in the city of Syracuse, in said State, respectfully shows:

That on the — day of June, 1900, the supreme court of the State of South Carolina rendered a judgment against your petitioner in a certain cause wherein David W. Ebaugh was the plaintiff, respondent and your petitioner was defendant, appellant, and by said judgment affirmed the judgment of the court of common pleas of the State of South Carolina for the county of Greenville, in said State, from which, said case was by your petitioner appealed to said supreme court of South Carolina, and said supreme court of South Carolina, by its judgment in said case and by the order of remittitur to the court below entered therein, affirmed the judgment of the court below against your petitioner for the sum of $1,000, with interest from October 15, 1898, at the rate of 7 per cent. per annum, together with costs, and thereby deprived your petitioner of its property without due process of law, and impaired the obligation of a contract,

121 all of which will appear by reference to the record and proceedings in this cause. Said supreme court of South Caro-

lina is the highest court in said State in which a decision could be had, and said decision and judgment was a final judgment in said case and finally determined the same; and your petitioner avers that by the said opinion and judgment of said supreme court of South Carolina in said case certain errors were committed to the prejudice of the defendant in said case, your petitioner herein, and certain Federal questions appearing upon the face of the record in said case were decided and determined adversely to the defendant, your petitioner, and adversely to the constitutional rights, privileges, and immunities of your petitioner arising under the Constitution of the United States, and claimed and asserted as such by your petitioner in said case; all of which will more in detail appear from the facts hereinafter averred and set forth by way of "cause shown" in support of this petition, and from the assignment of errors annexed hereto. And your petitioner claims the right to remove said judgment and the record in said cause to the Supreme Court of the United States by a writ of error under the statutes of the United States authorizing writs of error to State courts, particularly under § 709 of the Revised Statutes of the United States, because your petitioner, defendant in said case, claimed before the supreme court of South Carolina in said case certain rights, privileges, and immunities granted and secured to your petitioner by the Constitution of the United States; and your petitioner particularly claimed:

1. That a certain contract entered into between the plaintiff in said case and the defendant therein, your petitioner, should be construed under and controlled by the public acts, laws and judicial proceedings of the State of New York, in which State said
122 contract was entered into, and that full faith and credit should be given to the public acts, records and judicial proceedings of the State of New York by the courts of South Carolina, and particularly by the said supreme court, but said court, by its judgment and opinion in said case impaired the obligation of said contract, and refused and failed to give full faith and credit to the laws of the State of New York, as aforesaid, in violation of section 1, art. IV, of the Constitution of the United States and § 905 of the Revised Statutes of the United States.

2. That the supreme court of South Carolina, by its judgment and opinion in said case, deprived your petitioner of divers and sundry other rights, privileges, and immunities claimed by it under the Constitution and laws of the United States, all of which is more fully shown and recited in the causes hereinafter shown in support of this petition, and all of which appears by the record and proceedings in said cause, which are herewith submitted.

Wherefore, your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas, and for such other orders and process as may be or become necessary in the premises, and that, upon the giving of a supersedeas bond and the approval thereof, all further proceedings in the supreme court of South Carolina, or under and pursuant to the judgment rendered therein, shall be suspended and stayed

until the determination of said writ of error by the honorable the Supreme Court of the United States.

And your petitioner will ever pray.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., *Petitioner*,
By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
*Attorneys for Petitioner.*

123 *Cause Shown.*

In support of the foregoing petition, your petitioner, Eastern Building and Loan Association of Syracuse, N. Y., respectfully shows to this honorable court as follows:

I.

That your petitioner is a domestic corporation of the State of New York, duly organized and existing under the laws of said State, with its corporate situs and domicile at Syracuse in said State as aforesaid, and that it has been a corporation as aforesaid ever since the first day of March, 1890 (printed case, p. 5, fol. 19; pp. 44–54, fols. 172–215).

II.

That under the laws of the State of New York and under the charter of incorporation and by-laws of your petitioner, its franchises are such as to make and constitute it a building, mutual loan and accumulating fund association, commonly known as a building and loan association, with all the rights and powers and subject to all the limitations of such corporations organized under the laws of the State of New York and particularly under the provisions of chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof and supplementary thereto, under and pursuant to which the organization of your petitioner was made and effected (printed case, pp. 44–54, fols. 172–215; pp. 68–92, fols. 271–364).

III.

That your petitioner, as a corporation of the State of New York, long prior to the institution of the suit aforesaid by the plaintiff therein, fully complied with all provisions of the laws of the State of South Carolina necessary to authorize and enable your
124 petitioner as a foreign corporation to do and transact business and to make and enter into contracts and have members and stockholders in the State of South Carolina.

IV.

That long prior to the institution of the action aforesaid in the courts of South Carolina, and on or about the first day of April, 1892, said plaintiff Ebaugh, in the action mentioned in the caption hereof, became a member of, and a stockholder in your petitioner, and subject as such to all the provisions of the charter of incorporation and by-laws of your petitioner and the laws of the State of New

York and the decisions of the courts of the State of New York construing and applying said laws to said charter and by-laws as between your petitioner and its members and stockholders (printed case, pp. 14–17, fols. 55–67; pp. 68–78, fols. 271–309; pp. 79–92, fols. 315–364; pp. 54–60, fols. 215–238; p. 21, fols. 81, 82; pp. 44–54, fols. 172–215).

V.

That during the month of March or April, 1892, the plaintiff aforesaid applied in writing to your petitioner at its home office in Syracuse, New York, for ten shares of the installment capital stock issued by your petitioner, and by the terms of such written application agreed to abide by all the rules and regulations of your petitioner and to abide and be governed by the charter of incorporation and by-laws of your petitioner and by the laws of the State of New York aforesaid (printed case, pp. 13, 14, fols. 51–55).

VI.

That your petitioner accepted said application and issued to said plaintiff at its home office in the city of Syracuse, New York, ten shares of its installment stock of the par or maturity value of
125 $100 per share, and amounting in all to $1,000 par value, represented by certificate No. 12170, duly issued to and accepted by said plaintiff on or about the first day of April, A. D. 1892 (printed case, pp. 13–17, fols. 51–67).

VII.

That said plaintiff paid a membership fee of $1 per share upon said installment stock and monthly installments of seventy-five cents per share by way of dues or calls, for seventy-eight months, which in total amounted to $595, and thereupon demanded from your petitioner the payment to said plaintiff of the full par or maturity value of said stock, to wit, $1,000, which demand not being complied with, said plaintiff began the action aforesaid (printed case, p. 7, fols. 24–26).

VIII.

That your petitioner, by way of defense to said action, expressly plead and relied upon its charter of incorporation, or articles of incorporation under the laws of the State of New York, its by-laws, rules and regulations, the written agreements and contracts of said plaintiff with your petitioner and his obligation to your petitioner by reason of his status as a member of and a stockholder in your petitioner as a corporation of the State of New York; and your petitioner specifically plead and relied upon the laws of the State of New York governing your petitioner and under which it was incorporated, and also certain decisions of the courts of New York constituting a part of the settled law of said State and binding both upon your petitioner and upon said plaintiff as a stockholder in and a member of your petitioner, and the decisions so plead and relied upon by your petitioner were the following, to wit: O'Malley *v.* People's, &c., Association, 92 Hun. (N. Y.), 572; Englehardt *v.* Fifth

Ward, &c., Association, 148 N. Y., 281; also reported in 42 N. E. Rep., 710; People *v.* Lowe, 117 N. Y., 175; Concordia Savings
126 & Aid Asso. *v.* Read, 93 N. Y., 474. (See also printed "case," pp. 54–60, fols. 215–238; p. 21, fols. 81–83.)

IX.

That your petitioner having so plead and relied upon said laws, decisions, articles of association and by-laws and upon the written contracts and agreements of said plaintiff made and entered into in the State of New York and under the laws thereof by said plaintiff with your petitioner, the same were given and admitted in evidence in said action and in nowise denied or controverted by any evidence given in said action on behalf of said plaintiff, but were and are undisputed facts and evidence in said action, appearing as such upon the face of the record therein and wholly documentary in character (printed case, pp. 5–13, fols. 18–50; p. 21, fols. 81–83; pp. 54–60, fols. 215–238; pp. 44–54, fols. 172–215; pp. 68–92, fols. 271–364; pp. 14–18, fols. 55–70).

X.

That the facts in this case were undisputed between the parties in the court below and in the supreme court, and the case upon the facts, practically presented only a question of law arising upon written contracts and documents and the public acts, records, laws and judicial decisions of the State of New York, and no disputed question of fact was submitted to the master for determination in the lower court in South Carolina, but on the contrary, the case turned upon questions of law, and therefore the only question presented to the supreme court of South Carolina for its determination arose out of the contract obligations of said plaintiff to defendant, your petitioner; said contract obligations having been entered into in the State of New York under and pursuant to the laws of said State and being wholly governed thereby.

127 XI.

That the supreme court of South Carolina in its opinion and decision in the case aforesaid finds and concedes that the said plaintiff was a member of and a stockholder in the defendant corporation, Eastern Building and Loan Association of Syracuse, N. Y., and had in fact entered into contractual relations with it in the State of New York under and pursuant to the laws of that State, stating that both the master and the circuit judge found as matter of fact that the laws of New York did not forbid the defendant from entering into an agreement by which the shares of stock would mature in a definite time; and, further, that "the general rule is that where a private corporation has entered into a contract not immoral in itself and not forbidden by any statute, and it has been in good faith performed by the other party, the corporation will not be heard on a plea of *ultra vires*." And that "this proposition is fully sustained by the decisions of New York." Whereas, the decisions placed in evidence by your petitioner distinctly contradict the learned court, by which

holding and decision the supreme court of South Carolina denies to your petitioner the equal protection of the laws and deprives it of its property without due process of law, impairs the obligation of its contract with said plaintiff and refuses to give full faith and credit to the laws of the State of New York as required by the Constitution of the United States (printed case, p. 100, Ex. A).

## XII.

That having plead and relied upon the laws, decisions, articles of incorporation, by-laws and contracts with the plaintiff, as aforesaid, your petitioner as a corporation of the State of New York authorized to do business in the State of South Carolina and subject to
128 the jurisdiction of the courts of that State, by reason of its compliance with the laws thereof, claimed and relied upon "the equal protection of the laws" of the State of South Carolina, guaranteed to your petitioner by the Constitution of the United States, and claimed and demanded that "full faith and credit" should be accorded by the courts of South Carolina to the laws and judicial decisions of the State of New York as guaranteed to your petitioner by the Constitution of the United States and claimed and demanded as a matter of intendment by its answer and the evidence given in its behalf, as aforesaid, all the rights, privileges and immunities to which your petitioner was and is entitled under the Constitution of the United States, and particularly claimed and demanded that the relations of said plaintiff Ebaugh and your petitioner Eastern Building and Loan Association of Syracuse, N. Y., should be determined by and under the laws of the State of New York, and that the settled construction of such contract obligation as determined by the courts of New York should be followed by the courts of South Carolina, and especially by the supreme court of said State (printed case, pp. 5–13, fols. 18–50; pp. 44–54, fols. 172–214; pp. 54–60, fols. 215–238; p. 21, fols. 81–83; pp. 68–78, fols. 271–310; pp. 79–92, fols. 314–364; pp. 14–17, fols. 55–66; pp. 40–43, fols. 157–169).

## XIII.

That all of the matters and things aforesaid and divers and sundry other matters involving Federal questions, are manifest upon the face of the record in said action, for the removal of which to this court a writ of error is by your petitioner prayed, and your petitioner presents herewith a duly certified printed copy of the "case" on appeal, upon which said action was heard and determined in said supreme court of South Carolina; and your petitioner also presents a duly certified copy of the opinion of the supreme court of
129 South Carolina showing the final decision of said court in said case and the grounds thereof, and marks the same "Exhibit A;" and your petitioner also presents a duly certified copy of the judgment and mandate and all the proceedings taken and orders entered in said action by the supreme court of South Carolina, finally adjudging and determining the issues therein, and marks same

"Exhibit B," and prays that such exhibits be for all purposes treated as a part of this petition in this behalf.

XIV.

That the opinion, decision and judgment of the supreme court of South Carolina rests entirely upon its refusal to give full faith and credit to the public acts, records and judicial proceedings of the State of New York, and to the contract entered into between said plaintiff and defendant thereunder; whereas, the rights of defendant in error, as a member of and a stockholder in plaintiff in error should have been determined by the laws of New York; and that the rights of defendant under said laws of New York were fully saved by exceptions to the rulings of the trial and appellate court (printed case, pp. 40–43, fols. 157–169; pp. 96, 97, fols. 382–387; Exhibit A).

*Assignment of Errors.*

Wherefore, comes now Eastern Building and Loan Association of Syracuse, N. Y., plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of South Carolina in the above-entitled cause and assigns error thereto as follows:

1. The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial decisions of the State of New York, plead and given in evidence by the
130 plaintiff in error, and in denying the rule of constitutional obligation established by section 1 of article IV of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

2. The supreme court of South Carolina erred in its construction of the contract obligation between plaintiff in error and defendant in error in placing the same construction upon the contract in the above-entitled case that was placed by said court upon the contracts in the cases cited in the opinion of the honorable court, and thereby impaired the obligations of a contract between the parties, refused to give full faith and credit to the public acts, records and judicial proceedings of the State of New York and deprived defendant of its property without due process of law.

3. The supreme court of South Carolina erred in adopting from the report of the master in the above-entitled case, as a part of its opinion therein, the following: "The plaintiff introduced in evidence the following decisions of that court: Whitney Arms Co. *v.* Barlow, 63 N. Y., 62; De Grand *v.* American Linen Co., 21 N. Y., 124; Diamond Match Co. *v.* Roeber, 106 N. Y., 473. This constituted the only evidence before me as to what was the law of New York touching this point. I find as a matter of fact that the law of New York is, that where a corporation enters into a contract that is in excess of its charter powers, or is authorized by law, it will nevertheless be bound to perform its agreement as contained in the contract if it suffers the other party to perform his agreement and receives the benefits and retains them. This being the law of New

York, it is conclusive of the case at issue." Whereas, defendant also placed in evidence certain other cases—under agreement that the New York reports should be referred to and the decisions
131 considered part of the case—and which cases and decisions placed in evidence by defendant, as shown by the record herein, clearly show that the aforesaid laws and decisions of New York as cited by the honorable court are not applicable to building and loan associations such as the defendant, your petitioner (printed case, p. 23, fol. 89).

4. The supreme court of South Carolina erred in refusing to give "full faith and credit" to the public acts, records and judicial proceedings of the State of New York and to the contract entered into between plaintiff in error and defendant in error in the State of New York and under and pursuant to the laws thereof, and by its decision, opinion and judgment in said case the supreme court of South Carolina, in contravention of the Constitution of the United States, impairs the obligation of the contract between the plaintiff in error and the defendant in error, and the said decision, opinion and judgment of the supreme court of South Carolina are erroneous in this, that they uphold a rule of law established by the supreme court of South Carolina impairing the obligation of contracts and depriving plaintiff in error of its property without due process of law.

5. The supreme court of South Carolina erred in holding and deciding that "as the laws of New York are not in conflict with the construction which this court has placed upon contracts similar to that upon which the action herein is founded, we fail to discover any facts causing us to differentiate this case from those hereinbefore mentioned."

6. The supreme court of South Carolina erred in refusing to determine and construe the rights of defendant in error as a stockholder in and member of plaintiff in error, and the contract relations between said plaintiff in error and defendant in error, under the laws and decisions of the State of New York, under which
132 laws and decisions said rights and contract must necessarily be determined and construed; thereby impairing the obligation of the contract herein and refusing to give full faith and credit to the laws of New York.

7. The supreme court of South Carolina erred in holding that the laws of New York did not forbid the plaintiff in error from entering into an agreement by which its shares of stock would mature in a definite time, thus making its certificates of stock unconditional promises to pay the maturity value of $100 per share at the expiration of seventy-eight months, regardless of the earnings and expenses of the corporation, thereby failing to give full faith and credit to the laws of New York under article 4, section 1, of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

8. The supreme court of South Carolina erred in holding that plaintiff in error, a corporation of New York, incorporated under chapter 122 of the Laws of 1851 of the State of New York as

amended by chapter 564 of the Laws of 1875 of said State, was and is bound by an *ultra vires* agreement embodied in a certificate of stock issued to defendant in error, and cannot be heard to question or deny its liability and obligations under such *ultra vires* agreement, notwithstanding that it has been expressly held and decided by the courts of New York that such an agreement is not binding upon this plaintiff in error and corporations of like character. And the supreme court of South Carolina thereby refused to give full faith and credit to the laws and judicial decisions of the State of New York in violation of article 4, section 1 of the Constitution of the United States, and section 905, Revised Statutes of the United States.

9. The supreme court of South Carolina erred in not determining the contract relations between the parties under and in accordance
133 with the articles of incorporation, by-laws, stock certificate, application for membership, the laws of the State of New York, and the decisions thereunder, when the said articles, by-laws, stock certificate, application for membership and the laws and the decisions of the State of New York were plead, relied upon and given in evidence by the plaintiff in error, and when the Federal questions involved were saved by exceptions of plaintiff in error (printed case, pp. 96, 97, fols. 382–388).

Wherefore, the said Eastern Building and Loan Association, plaintiff in error, prays this honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of South Carolina entered in the said case of David W. Ebaugh, plaintiff, respondent, *v.* Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, as aforesaid.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
*Plaintiff in Error,*

By WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW, *Its Attorneys.*

D. A. PIERCE,
RUSSELL & WINSLOW, *Of Counsel.*

134 OCT. 1ST, 1900.

Let the writ of error issue as prayed, & operate as a supersedeas on plaintiff in error filing bond in the penal sum of three thousand dollars, conditioned according to law and approved by the undersigned.

MELVILLE W. FULLER,
*Chief Justice of the United States.*

Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed 5 Oct., 1900. U. R. Brooks, clerk.

Endorsed on cover: File No., 17938. South Carolina supreme court. Term No., 453. Eastern Building and Loan Association of Syracuse, New York, plaintiff in error, *vs.* David W. Ebaugh. Filed October 22nd, 1900.